

**COURSE TITLE    Workplace Harassment for Supervisors and Managers**

**COURSE ID    lch\_01\_a05\_lc\_enus**

**COURSE DESCRIPTION** Typically, when people hear the term workplace harassment, they think of sexual harassment. But that is just one of the many forms workplace harassment may take. Unlawful harassment is any form of unwanted or unsolicited behavior directed at an individual or group of individuals, by another employee or superior, on the basis of a protected characteristic as outlined by various antidiscrimination laws (Title VII of the Civil Rights act, the Americans with Disabilities Act , the Age Discrimination in Employment Act, and the Genetic Information Nondiscrimination Act). These protected characteristics include race, color, national origin, religion, gender, disability, age, and family medical history. Depending on state law and other circumstances, additional characteristics such as sexual orientation and marital status may also be protected. This course will review the characteristics of various forms of harassment and discuss what supervisors and managers can do to discourage harassing behavior of any type in their own work groups by their employees or themselves.

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**COURSE GOAL** To create and maintain a work environment that discourages harassment

**TARGET AUDIENCE** Supervisors and managers

### **Course Overview**

Unlawful workplace harassment is a form of discrimination that involves harassment of an employee – verbally, physically, or both – because of that person's race, color, religion, national origin, gender, disability, age, or other legally protected characteristic.

While all forms of harassment are offensive, these protected characteristics are key to determining whether the harassment is just rude and thoughtless, or against the law.

The law specifies that workplace harassment is unlawful when it involves a protected characteristic and the conduct itself either creates a hostile work environment.

The conduct of others creates a hostile work environment for someone when the conduct is unwelcome and sufficiently severe or pervasive to make it difficult for that person to continue working in the same environment results in a tangible change in an employee's work status if a supervisor's harassing conduct results in a change in an employee's employment status or benefits, the conduct is considered unlawful workplace harassment. For example, if a supervisor demotes, fires, or fails to promote an employee because of this person's membership in a protected group, this is likely to be considered a tangible change in employment status.

The law also prohibits employers from retaliating against employees who report discrimination and harassment or who participate in investigations of this unlawful behavior.

This course will help you to recognize workplace harassment so that you can ensure you don't engage it in personally, and take steps to prevent it if you see it happening among your coworkers. Also, as a supervisor, you may receive complaints or questions about harassment from your employees.

Being able to recognize and prevent workplace harassment will protect you and your organization, and make for a happier and more productive workplace.

**LESSON TITLE Harassment in the Workplace**

**LESSON GOAL To be able to recognize conduct that is likely to be construed as unlawful harassment**

**Topic 1: The Makings of a Hostile Environment**

Recognize when conduct in the workplace constitutes unlawful harassment .

Employees in managerial or supervisory positions must be able to recognize when a person's conduct constitutes unlawful harassment.

Question: Lee, a 50-year old Asian man, works as an engineer for a small company. Most of his colleagues are Christian, while Lee is an atheist. He receives daily e-mail blessings from his colleagues, he's asked to pray every morning, and colleagues frequently try to convert him to Christianity. He's repeatedly asked his colleagues to stop, yet they continue, making it difficult for him to concentrate on his work.

Would this be considered unlawful harassment?

1. (CORRECT) Yes, because Lee's coworkers target him because of his religious beliefs
2. Yes, because Lee is Asian and over 40
3. No, because Lee doesn't have his own religion, so his religious rights aren't being infringed
4. No, because his colleagues mean well

Question: Jennifer, a Caucasian woman in her twenties, works at an advertising agency. One of her colleagues sends her an e-mail that states she's very attractive and asks her out on a date. Jennifer declines and the colleague stops having coffee with her during their breaks.

Is this an example of unlawful harassment?

1. Yes, because regardless of the fact that the behavior stops when she makes it clear it's unwanted, the e-mail mentions her looks and implies a desire for a sexual or romantic encounter
2. Yes, because the conduct was unwanted
3. (CORRECT) No, because the incident was not severe and only occurred once, and the behavior stops as soon as she makes it clear it's unwanted
4. No, because a colleague sent the e-mail rather than a supervisor or manager

As a manager or supervisor, you need to be able to recognize situations of potentially unlawful harassment.

Answer the questions in any order to test your knowledge of what constitutes unlawful harassment in the workplace.

Question: James is an African-American war veteran who was injured in the line of duty and is now confined to a wheelchair. He works as a web site content developer and his manager often makes disparaging remarks about the quality of his work. The manager has also had to speak to James about his frequent tardiness and violations of the company's dress code.

Would this be considered unlawful harassment?

1. Yes, because the manager is being racist and acts in a discriminatory way because of James's impairment
2. Yes, because James should be given some leeway due to his disability
3. (CORRECT) No, because the manager speaks to James about his work performance, not his race or disability
4. No, because James is a veteran, which is not a protected characteristic

Question: Augustine is a 45-year old refugee from an Eastern European country. Her manager calls everyone by an "identifying" nickname, including her. He does this because he thinks it makes everyone feel welcome. He coins the nickname "Babushka" for her, because of the brightly colored scarves she wears on her head as part of her traditional dress in Eastern Europe.

Is this an example of unlawful harassment?

1. (CORRECT) Yes, because the harassment is aimed at Augustine's country of origin
2. Yes, because the manager is discriminating against Augustine because of her age and her status as a refugee
3. No, because the manager calls everyone by a nickname
4. No, because the derogatory comments are not meant maliciously

## Unlawful harassment

Unlawful workplace harassment can damage people's lives and seriously affect your business. But how can you prevent it from happening?

The first step is to make sure you understand what workplace harassment is. If you can recognize when it's happening – or pick up warning signs that it may happen – you can take steps to stop it before it becomes a problem.

The law protects people against discrimination on the basis of certain characteristics.

If someone in the workplace is on the receiving end of unwelcome conduct involving one of these protected characteristics, it may be considered unlawful harassment.

If the unwelcome conduct isn't based on a protected characteristic, it may not be illegal. This doesn't mean it's acceptable in the workplace, though, as many employers have anti-harassment policies that cover behavior that is rude and offensive, regardless of whether it's specifically prohibited by law. For now, we will focus on unlawful harassment to ensure you understand the minimum expectations of conduct set by the law.

People's actions and the context in which their actions occur help determine whether workplace harassment is unlawful.

You need to be clear about where to set the limit so you can guide and inform your employees about inappropriate behavior, ensure fair treatment, and protect your company against litigation.

Consider this situation. Andrew works in a call center for a large insurance company. He's a devout Jehovah's Witness. He's very discreet, but his colleagues seem to dislike him for his religious affiliation. Follow along as he discusses what's been happening at work.

As part of my faith, I don't celebrate Christmas. This seems to annoy my colleagues. They often say hurtful things when they know I can hear them, like "Those people have ruined Christmas – we can't even have a tree in the office."

Last week, management allowed those of us who don't have customer-related duties to leave early for the long holiday weekend. Our manager was on vacation and after the announcement was made, several colleagues came up to me and told me I couldn't leave, because it's not "my holiday." Then they told me to handle all their phone calls while they were gone or they'd report me to HR!

We work in the call center and someone has to be there to take the calls, so I couldn't leave. I was the only one in the office until 6:00 p.m. when the next shift arrived.

Question: Do you think the behavior of Andrew's colleagues is against the law?

1. (CORRECT) Yes, because their behavior discriminates against Andrew based on his religion.

This is the correct option. The behavior of Andrew's colleagues is unlawful

because it involves harassing Andrew based on his religion.

2. No, because Andrew is a Caucasian male and so isn't legally protected from harassment.

This option is incorrect. Although Andrew isn't a racial minority, religion is one of the protected characteristics. Harassment based on a person's religion is illegal.

Title VII of the Civil Rights Act identifies the characteristics it's illegal to use to discriminate against people in the workplace. One of these is religion.

So when colleagues harass Andrew based on his religion, they are engaging in unlawful harassment.

Question: Which other characteristics do you think it's unlawful to use as the basis for discriminating against others?

1. (CORRECT) Race, color, or national origin

This is a correct option. Discrimination on the grounds of an employee's race, skin color, ancestry, or country of birth is illegal.

2. (CORRECT) Sex or gender

This is a correct option. Discrimination based on someone's sex is a breach of civil rights. This category includes sexual remarks, requests for sexual favors, and making disparaging non-sexual remarks about someone's gender.

3. (CORRECT) Age

This is a correct option. It's unlawful to discriminate against employees who are 40 or older based on age.

4. (CORRECT) Disability

This is a correct option. People with mental or physical disabilities are members of a protected group, so derogatory or intimidating references to an employee's mental or physical impairment are prohibited.

5. Economic status

This option is incorrect. Although negative comments about a person's economic status may be rude and hurtful, they aren't illegal.

#### 6. People's dress

This option is incorrect. It's not nice to discriminate against someone in the workplace because of the way this person dresses, but it's not illegal to do this. Be aware, however, that if religious or country-of-origin issues influence the person's dress, discrimination based on dress may become illegal.

You've remembered some of the correct groups. In fact, all options except economic class status and dress represent protected groups.

In the United States, race, color, national origin, sex, age, religion, and disability are federally protected characteristics. In addition to the protections in federal laws, some state and local laws also protect an employee's sexual orientation, marital status, political affiliation, or status as a parent.

You should familiarize yourself with your state and local laws so you're sure which categories are legally protected in your area. And make sure you know your own company's policy, which may set higher standards of conduct than those specifically required by law.

### **Learning Point 2: Hostile environment**

You've learned that harassment can be unlawful if it's based on protected characteristics. But does this mean that any thoughtless comment to an employee about a protected characteristic is harassment?

No it doesn't.

For conduct to be considered harassment, it needs to create what is known as a hostile work environment for the person on the receiving end of the conduct.

Conduct toward another employee is said to create a hostile work environment for that employee if it's unwelcome, and unwelcome conduct is behavior that makes an employee uncomfortable in any way.

In Andrew's case, his colleagues' comments single him out, make him feel uncomfortable, and are clearly unwelcome.

Examples of severe conduct include physical violence, threats, or any situation where an employee becomes fearful for his or her safety. In these cases, a single unwelcome incident is enough to create a hostile environment.

If less severe forms of harassment occur on several occasions or several employees are the perpetrators, the harassment would be considered pervasive.

In Andrew's case, the fact that several employees harass him on more than one occasion is probably pervasive enough to make his working environment hostile.

If a person who is the target of inappropriate conduct makes it known that the conduct is unwelcome, and the offender stops the behavior, then the conduct is unlikely to be considered pervasive. On the other hand, if the offender continues his or her conduct despite the recipient's objections, the conduct will be considered pervasive.

A single unwelcome incident is unlikely to be interpreted as creating a hostile environment unless the incident is very severe.

Rachel, Henry, and Linda have experienced unpleasantness at work.

Can you spot the potential unlawful harassment in the examples that follow? First, you'll find out more about Rachel's situation.

"Most of my coworkers are male, and I often hear them telling dirty jokes right outside my office. They also frequently comment about the length of my skirt or go out of their way to compliment my legs."

"I've asked them to stop, but it just makes it worse. If it weren't for them, I'd love my job, but as it is, I want to find work somewhere else."

Do you think the conduct Rachel experienced constitutes unlawful harassment?

Question: Select your answer and then select the Get Feedback button.

1. Likely

That's right. You said that it's likely that the conduct Rachel experienced constitutes harassment. Rachel's coworkers' offensive conduct, which is based on the fact that she's a woman, is clearly unwelcome. They ignore her requests to stop their behavior, which makes their conduct pervasive. So it's likely that the behavior of Rachel's colleagues would be considered unlawful harassment.

2. Not likely

You said that it's not likely that the conduct Rachel experienced constitutes

harassment. Actually, it's likely that the behavior of Rachel's colleagues would be considered unlawful harassment. The offensive conduct, which is based on the fact that Rachel is a woman, is clearly unwelcome to her. Rachel's coworkers ignore her requests to stop their behavior, which makes their conduct pervasive.

3. Not sure

You said that you're not sure that the conduct Rachel experienced constitutes harassment. Actually, it's likely that the behavior of Rachel's colleagues would be considered unlawful harassment. The offensive conduct, which is based on the fact that Rachel is a woman, is clearly unwelcome to her. Rachel's coworkers ignore her requests to stop their behavior, which makes their conduct pervasive.

Henry's manager is consistently rude to everyone. Consider what she says and Henry's response to her attitude.

"You're lazy; otherwise this would have been completed yesterday! I've never had to work with such idiots. Can't you get anything right?"

"My manager is consistently rude. She barely greets anyone in the office and when she does speak to us, it's generally to complain that we don't look professional enough or that our work isn't up to standard. I just don't look forward to a day at the office anymore."

What about Henry's example, in which his manager is consistently rude to employees? Do you think that constitutes unlawful harassment?

Rate whether or not you think Henry's experience is of unlawful harassment and then select the Get Feedback button.

1. Likely

You said that Henry's manager's rudeness to employees likely constitutes harassment. Although the manager's treatment of Henry and his coworkers is rude, it's not based on any legally protected characteristics. While the manager's behavior is unpleasant and offensive to Henry, it's not considered unlawful harassment.

2. Not likely

You said that Henry's manager's rudeness to employees is not likely to constitute harassment. The manager is hostile but doesn't appear to discriminate unlawfully against anyone. Although the manager's conduct is unpleasant and pervasive,

it's not illegal.

3. Not sure

You said that you're not sure whether Henry's manager's rudeness to employees constitutes harassment. Although the manager's comments are persistent and unwelcome, she doesn't appear to single out members of a protected group. Her unpleasantness is aimed at everyone, so it's unlikely to be illegal.

Rude or obnoxious managers or work colleagues can make anyone unhappy. But unless the harassment is aimed at characteristics of a protected group, is unwelcome, and is severe or pervasive, it's not against the law.

Linda and Arlene are checking productivity scores on the team's motivation board. Follow along and consider if what occurs is unlawful harassment.

LINDA: Wow, Arlene, you're really picking up the pace.

ARLENE: Yeah. Take that Grandma! I've finally outpaced you.

LINDA: Well you better watch out, you whippersnapper! I'm going to kick it into high gear and get back on top!

In Linda's case, her colleague Arlene made a potentially unwelcome remark about Linda's age. However, Linda clearly didn't take offense to it. In fact, Linda shot back with a response that reflected the friendly competitiveness among the team members. Thus, this would not be considered harassment.

As a supervisor or manager for your company, you are expected to deal with unlawful harassment when you notice it so you can take action to prevent a hostile work environment for any of your employees. The first step is to be able to recognize what unlawful harassment is.

Answer the questions in any order.

Question: Maria, a 25-year old Mexican woman, works as a sales consultant at your firm. She tells you that her coworkers have been using racially derogatory language toward her, as well as making jokes at her expense. She's ignored her coworkers as much as possible, but once burst into tears in front of them. The coworkers didn't apologize and continue to mock her and her nationality.

Is this an example of unlawful harassment?

1. (CORRECT) Yes, because the comments and jokes are targeted at Maria's race and national origin, and the incidents keep occurring even though it's clear that

they upset Maria

This is the correct option. The harassment Maria is experiencing is unlawful, because it's based on protected characteristics – her race and national origin – it's unwanted, and it's pervasive.

2. Yes, because her coworkers continued to harass her after she burst into tears

This option is incorrect. Although this is an example of unlawful harassment, the reason why is not correct. Maria's tears indicate that this conduct is definitely unwanted, and its repetition makes it pervasive. However, the harassment must also be directed at her race and national origin, which are protected characteristics, in order to be unlawful.

3. No, because her coworkers' behavior doesn't compromise Maria's work

This option is incorrect. Maria is experiencing unlawful harassment. Not only is the conduct unwanted and pervasive – making it harassment – but race and national origin are protected characteristics which makes the harassment unlawful

4. No, because the comments are not severe, even though they're directed at Maria on the basis of protected characteristics

This is an incorrect option. The harassment meets all three criteria for unlawful harassment. It's directed at an individual based on protected characteristics, it's unwanted, and it's pervasive.

Question: Mark is a 30-year old Caucasian male. His female supervisor frequently touches his arm when talking to him and makes suggestive comments. Mark says he has never flirted with his supervisor and is feeling very uncomfortable about this treatment. He has come to you for help.

Is this an example of unlawful harassment?

1. (CORRECT) Yes, because the comments constitute sexual harassment and occur frequently

This is the correct option. Sexually-charged conduct and comments constitute sexual harassment. Because the offender is Mark's supervisor and because the harassment is ongoing, it's both pervasive and severe.

2. Yes, because the supervisor is in a position of power

This option is incorrect, although the example is unlawful harassment. The supervisor's position of power certainly makes the matter more serious, but even if a coworker treated Mark in this way, it would be unlawful.

3. No, because Mark is both white and male, so he's not a member of a protected group

This option is incorrect. In this case, Mark is being subjected to unwelcome, pervasive conduct specifically because of his gender.

4. No, because his supervisor has not threatened to fire or demote Mark if he doesn't provide sexual favors

This is an incorrect option. Even though "sexual blackmail" – also known as tangible job detriment by a superior – would be an even more severe form of harassment, Mark's supervisor is still sexually harassing him.

Question: Andrea, a 45-year old Caucasian woman works as a messenger for your company. A member of the office team once called her an idiot when she failed to deliver an urgent message.

Is this an example of unlawful harassment?

1. Yes, because the coworker made a derogatory remark to a woman

This is an incorrect option. Although the comment was rude and offensive, it did not refer to a protected characteristic.

2. Yes, because Andrea falls within two protected groups – age and gender

This option is incorrect. The comment wasn't about Andrea's age or her gender. Membership in a protected group doesn't ensure that any offensive behavior against that person is unlawful.

3. (CORRECT) No, because the conduct was not directed at a protected characteristic

This is the correct option. Although the coworker's comment was insensitive, it was not directed at Andrea's age or gender.

4. No, because Andrea failed to carry out her duties correctly

This option is incorrect. Although the example isn't unlawful harassment, discriminatory harassment can not be justified for any reason.

Discrimination based on an employee's race, color, national origin, sex, disability, age, or religion is unlawful. Some states also include sexual orientation, marital status, political affiliation, and status as a parent as protected characteristics.

Illegal workplace harassment occurs when coworkers or managers discriminate against an employee based on a protected characteristic, and the conduct is unwelcome and either severe or pervasive.

## **Topic 2: Harassment of Employees by Supervisors (T8)**

Determine whether actions taken by a supervisor or manager could be construed as a tangible employment action

Question: Which two examples of supervisory actions constitute tangible employment actions?

1. Humiliating an employee in front of a customer by calling the employee useless
2. Firing a female employee who fails to perform her job satisfactorily
3. (CORRECT) Failing to promote an employee because she's female
4. (CORRECT) Terminating an employee because she complains about continuing derogatory comments her manager makes about her physical disability

Question: Which two examples of supervisory actions may be construed as tangible employment actions?

1. (CORRECT) Firing an employee because he won't convert to a particular religion
2. (CORRECT) Firing an employee as a result of a complaint he made about unlawful harassment
3. Changing an employee's title from "foreman" to "team lead" without changes in benefits or job duties, after the employee complains of racial harassment
4. Failing to promote an employee as a result of her unwillingness to work overtime due to family commitments

## Vicarious liability

As a manager, your actions at work represent your company as a whole. This is based on the authority you have as a manager and the fact that your conduct is considered an extension of the operations of the company. But this also means that any misconduct on your part reflects on the entire organization, and can leave the company on the hook for the misconduct.

In legal terms, this is known as vicarious liability.

Consider this situation.

Martina is the editor for a large web-based retail store. Martina expects Jose, a Latino male, to have coffee waiting for her on her desk every morning. A couple of weeks ago, Jose complained to his supervisor Jim about the situation.

"Jim, why is it that I have to make and bring Martina her coffee every day and nobody else has to? Not only is it demeaning to me, but everyone's making fun of me and calling me the "coffee guy." They say that because I'm from Colombia I must really know my coffee beans!"

"Jose, you should be flattered! Martina told me that nobody else understands how to make coffee like a Colombian, and that's why she wants you to make it for her. And hey, don't forget about that promotion you applied for. If I were you, I'd just make the coffee and stop complaining about it. "

A few days later, Jose overheard Martina joking with someone about having her "personal barista" deliver her coffee every day.

Jose went straight to Jim to file a harassment claim and to refuse to continue delivering the coffee.

The next day, Jose received an e-mail from Jim telling him that he would not get the promotion that he had been working for.

If Jose filed a harassment claim, how likely is it that the company would be liable for Martina and Jim's actions?

Indicate how likely you think it would be that the company would be held liable for Martina and Jim's actions. Then select the Get Feedback button to learn more.

### 1. Likely

You correctly indicated that it's likely that the company would be liable for Martina and Jim's actions. Refusing Jose a promotion because he made a

harassment complaint against Martina is retaliation, and because the action was taken by Jim, Jose's manager, the company would be vicariously liable for Jim's actions.

2. Not likely

You indicated that it's not likely that the company would be liable for Martina and Jim's actions. Actually, it is likely in such a case. Refusing Jose a promotion because he made a harassment complaint against Martina is retaliation, and because the action was taken by Jim, Jose's manager, the company would be vicariously liable for Jim's actions.

3. Not sure

You indicated that you're not sure if the company would be liable for Martina and Jim's actions. It is likely that the company would be held responsible in this case. Refusing Jose a promotion because he made a harassment complaint against Martina is retaliation, and because the action was taken by Jim, Jose's manager, the company would be vicariously liable for Jim's actions.

But what if Martina and Jim were simply coworkers of Jose, and the situation didn't involve a promotion?

Would the company still be liable for Martina and Jim's harassment of Jose over the coffee situation?

To answer this question, you need to understand a little more about vicarious liability. The law provides specific guidelines for determining who is considered a supervisor or manager in a potential case of harassment. This depends on the person's role.

Individuals qualify as supervisors if they can make decisions that directly impact employees' employment status – for example, hiring, firing, promoting, or demoting. They also qualify if they assign employees' day-to-day work, even if they can't make decisions that could impact the employees' work status.

However, individuals who simply relay work instructions from a manager to another employee and report back to that manager are not considered supervisors. Also, someone who directs only a few tasks – for example, by coordinating work on a particular project – is not considered a supervisor under the law.

If an employee reasonably believes that an individual has supervisory authority, an employer may be subject to vicarious liability for harassment by a supervisor even if that individual doesn't actually have supervisory authority over the employee.

Question: Suppose Martina was a senior sub-editor for the web-based retail store who provides performance appraisals and makes recommendations for promotion, but doesn't make the final decision on who is promoted.

Would she still be considered Jose's supervisor or manager?

1. No
2. (CORRECT) Yes

Actually, Martina would be considered a supervisor for purposes of the company's liability for her harassment. This is because she has the authority to influence Jose's employment status and promotion opportunities.

Martina has power to influence decisions that could seriously impact Jose's working life. So Martina would be acting as a supervisor and the company would likely be subject to vicarious liability for any harassment that results in a change to an employee's employment status. This concept will be discussed later in this topic.

Question: And what about Jim? Suppose he was a team lead who handed out daily assignments to the team. Would he still be regarded as Jose's supervisor?

1. (CORRECT) No
2. Yes

In this case, Jim has no authority over Jose's employment status. Therefore, he would not be considered a supervisor for purposes of the company's liability for harassment. This doesn't mean Jim is free to harass Jose without consequence; instead, it means Jim wouldn't be considered to be acting as an extension of the entire company if he were to harass Jose. This distinction relates to the penalties the company may face if it permits the harassment to occur or doesn't properly respond to Jose's complaints.

Jim would have no power to impact Jose's working conditions, and therefore would not be considered a supervisor. Therefore, the company itself would not be liable for Jim's actions unless it knew or should have known about them and failed to take appropriate action.

To avoid liability for harassment by supervisors, an employer must show that it took reasonable care to prevent harassment and to deal with it effectively if it occurred. The employer must also show that the victim failed to make use of the company's preventative or corrective measures, such as utilizing the complaint procedure, to alert the company to the harassment problem.

But there are situations where the company's efforts can't protect it from liability for a supervisor's harassment. Under the law, a company is always responsible when a supervisor takes a tangible employment action against an employee that is connected with harassment.

### Tangible employment actions

A tangible employment action involves a significant negative change to a person's employment status. Examples of harassment-related actions by a manager could include refusing to promote an employee who would not perform sexual favors requested by the manager, or firing an employee in retaliation for reporting the manager's racial harassment to HR.

Other actions in this category include reassigning an employee to a less desirable position, reducing benefits, or withholding resources that the employee needs in order to perform his or her job.

Question: Do you think Jose's situation would be considered to have resulted in a tangible employment action?

1. (CORRECT) Yes
2. No

Harassment that results in a tangible employment action is particularly serious because it's an abuse of the power a manager has over an employee.

If supervisors or managers abuse their power by harassing an employee, or making his or her job status contingent on ignoring harassment at the hands of others, it may put the employee in the difficult position of having to tolerate the behavior out of fear of what refusal or reporting it might bring.

Question: Which situations do you think illustrate harassment that results in a tangible employment action?

1. (CORRECT) Reassigning an employee to a lower-status position after she complains that her coworkers are harassing her because she's excused from working on Saturdays due to religious reasons

This option is correct. This is a case of unlawful harassment resulting in a tangible employment action because the harassment is based on a protected characteristic and because the action the manager takes directly impacts the employee's work.

2. (CORRECT) Demoting an employee who filed a complaint with HR that he was passed over for a promotion due to his race

This option is correct. This is a case of unlawful harassment resulting in a tangible employment action because the harassment is based on protected characteristics and because it directly impacts the employee's work, benefits, and income.

3. Firing an employee who refuses to cut his hair in order to adhere to a restaurant's dress code, which is based on food safety regulations

This is an incorrect option. Even though the employee's firing is a tangible job action, there's no harassment or discrimination present in this example. Note that if the employee's refusal to cut his hair was based on religious beliefs, the employer may be required to reasonably accommodate the employee if possible in light of the food safety regulations.

4. Reassigning a 50-year old employee from full- to part-time status at her request for fewer hours, with no change in duties or base salary, but a change in benefits because of her new status

This is an incorrect option. The tangible employment action and resulting change in benefits was made at the request of the employee and was not the result of harassment or discrimination based on her age or gender.

**PARTLY CORRECT FEEDBACK** Actions based on protected characteristics that cause significant change to an employee's working conditions are unlawful tangible employment actions. The important thing to remember about a tangible employment action is that there must be an "official act" on the part of the company.

**INCORRECT FEEDBACK** Actions based on protected characteristics that cause significant change to an employee's working conditions are unlawful tangible employment actions. The important thing to remember about a tangible employment action is that there must be an "official act" on the part of the company.

**CORRECT FEEDBACK** Actions based on protected characteristics that cause significant change to an employee's working conditions are unlawful tangible employment actions. The important thing to remember about a tangible employment action is that there must be an "official act" on the part of the company.

Employers are subject to vicarious liability for unlawful supervisor harassment if the harassment results in tangible employment actions against the harassed employees.

Tangible employment actions are any actions that negatively affect employees' pay, benefits, or ability to perform their jobs effectively.

## **LESSON TITLE** Dealing with Harassment

**LESSON GOAL** To encourage a respectful work environment and deal appropriately with harassment complaints

### **Topic 1: Encouraging a Harassment-free Environment**

You supervise a team of metal workers on a factory floor. Most of your employees are men and they often make sexist jokes about women. The men tend to be passionate supporters of the local ice hockey team and dismiss other sports. They've been heard making disparaging comments about men who aren't interested in hockey, saying that they're "pansies."

The team often has races to find out who can finish the most welds in an afternoon and the winner is bought a drink in the local bar.

Answer the questions about how you can deal with the harassment before it escalates into a complaint in order.

Question: You want to build a harassment-free work environment.

Which two situations must you address?

1. (CORRECT) The comments and jokes about women
2. (CORRECT) The disparaging comments about "pansies"
3. The focus on ice hockey above other sports
4. The buying of alcohol and the competitiveness of the men

Question: You overhear one of the workers, Michael, use a racial slur to refer to a male worker who has family ties to the Middle East. You immediately ask Michael to meet with you in your office.

What three statements should you make to Michael to ensure this conduct doesn't continue?

1. (CORRECT) "Using names like that is a form of harassment. It's illegal, and the company does not permit it."
2. (CORRECT) "You need to respect your coworkers for the work that they do. I won't tolerate that type of language from you or from anyone else."
3. (CORRECT) "I need your word that nothing like this will happen again. Can you do that?"
4. "If you use that language again, you'll lose your job."
5. "Teasing people isn't nice, no matter what."

You manage a diverse creative team at an advertising agency. Some members of the team have started creating caricatures of their colleagues and posting them in the rest area. Some of the caricatures focus on characteristics like race and religion, and others focus on eccentricities in style of dress.

Some members tend to tell a lot of sexist and racist jokes. You've also heard members of the team teasing colleagues for not being adventurous enough to join them for skydiving and hiking trips on the weekends.

Answer the questions in order to test your knowledge of dealing with the harassment before it escalates into a complaint.

Question: Which two situations must you address to prevent unlawful harassment?

1. (CORRECT) Caricatures that focus on racial or religious characteristics
2. (CORRECT) Racially offensive jokes
3. Caricatures that focus on characteristics of people's dress
4. Teasing about not being adventurous enough

Question: You notice a designer, Simon, put up an image of his coworker, Alice, on the notice board. The image shows Alice naked. You take down the image and ask to speak to Simon privately in your office.

What three things should you say to Simon to ensure this conduct doesn't continue?

1. (CORRECT) "Posting images like that is a form of harassment, that makes the work environment uncomfortable for people. We're all responsible for the atmosphere in our department."

2. (CORRECT) "I'm sure Alice would be upset if she knew about this. Imagine how embarrassing it would be for her to face the rest of the team."
3. (CORRECT) "I need your promise that you will not create and post a drawing like this again."
4. "You're wasting company time and money, upsetting people when you should be working on the campaign instead."
5. "Women don't like to have images of themselves naked put up in public. If you're going to do this again, make sure it's not a woman."

Recognize the benefits of a harassment-free work environment

Recognize your role in creating a culture of respect and a work environment where harassment is not tolerated

Question: In what ways could you fulfill your responsibilities as a supervisor or manager in creating an environment in which harassment isn't tolerated?

1. (CORRECT) Treat all employees with respect and lead by example with your own conduct
2. (CORRECT) Ensure all employees are familiar with the company's harassment policy and that they know they can come to you to report harassment if they experience it
3. Tell your employees if they go over your head and talk to HR about any harassment that occurs, they will regret it
4. Ask your employees to dress respectfully so they don't invite sexual harassment

Question: In what ways could you create a workplace in which harassment isn't tolerated, thereby fulfilling your responsibilities as a supervisor or manager?

1. (CORRECT) Treat all employees with respect and lead by example with your own conduct
2. (CORRECT) Ensure all employees are familiar with the company's harassment policy and that they know they can come to you to report harassment if they experience it
3. Tell your employees that because they all know that harassment shouldn't be happening at work, you don't want to hear any complaints
4. Ask your employees to dress respectfully so they don't invite sexual harassment

As a manager or supervisor, you have the responsibility to ensure your employees can do their jobs in an environment free from harassment.

But you also have a wonderful opportunity to set the tone in your workplace. Your actions and attitudes filter down to those you manage.

You're in a position to model the respectful types of behaviors and conduct your company expects. And by doing this, you encourage employees to do the same.

Consider this scenario.

Violet is a manager of a small team at her company. One day, she overhears someone in a group of people make a comment about Linda, another employee in her group.

"Yeah, some of us are more "hip" than Grandma over there."

Violet immediately intervenes.

"I know you're joking, but some people might not appreciate being joked about in that way. I know I wouldn't. Let's remember – we're all a team and we need to respect each other."

What do you think the team's reaction will be to Violet's intervention?

Think about the scenario you just witnessed and select the option that you think represents the most likely outcome. Then select the Get Feedback button.

1. They'll think twice before repeating such comments

You've stated that team members will think twice before repeating such comments. That would be the most likely result. If they notice that Violet doesn't tolerate such talk, they're less likely to continue to engage in it.

2. They'll ignore the comments and continue the behavior

You've stated that team members will ignore the comments and continue the behavior. This isn't likely. If they notice that Violet doesn't tolerate such talk, they're less likely to continue to engage in it.

3. They'll target Linda even more

You've stated that team members will target Linda even more. This is very unlikely. If they notice that Violet doesn't tolerate such talk, they're less likely to continue to engage in it. However, if they do take it to the next level with Linda and the behavior becomes more severe, Violet could end up with a harassment situation on her hands and will have to take steps to correct it.

Violet's statement to her team demonstrates her personal commitment to respect of others and her intolerance of disrespectful comments, no matter how innocently they are intended.

Because of your position, employees notice and respond to your actions.

On a daily basis, your own actions and behaviors model the type of behavior you expect from your employees.

Follow along as Joel, one of Violet's team members, witnesses Marcel giving a new employee a hard time.

MARCEL: Hey four eyes, are you blind? That's not the way we do things around here. Why don't you clean your glasses and try to get it right.

JOEL: Hey Marcel, can I talk to you for a minute?

MARCEL: Yeah, Joel, what do you want?

JOEL: Come on Marcel. Give the guy a break. It's his first day on the job. I bet if you took a few minutes to explain how to do it, he'd appreciate it a lot more.

When you model respectful conduct and encourage it in your employees, your employees will respect differences and feel empowered to challenge others to protect the harassment-free nature of their work environment.

By modeling respectful conduct, you also make it easier for employees to come forward when they do have complaints.

By creating a respectful environment, you can reduce or prevent incidents of harassment.

It's also important to make sure that employees are familiar with and understand your company's harassment policy.

This helps to ensure that employees know what is expected of them, as well as what to do if they experience or observe harassment.

A few days after Violet intervened to stop team members making disparaging remarks about Linda's age, Linda comes by her office. Follow along as she discusses her concerns about her colleagues' behavior with Violet.

LINDA: Violet, I'm probably being silly, but something's really bothering me about how the younger people in the office are treating me. Maybe I'm just being too sensitive, I just don't know.

VIOLET: I'm sorry to hear you're feeling upset Linda. I take that very seriously. And I don't think you're being silly coming to me – I want you to feel safe and supported here. If there's something that's bothering you, I want to know about it and I want to help.

LINDA : Thanks Violet. It's such a relief to be able to talk about this.

Violet's attitude helps her employees feel comfortable and more confident about coming to her for help if they experience harassment.

Her attitude and actions create a "safe" work environment – one in which employees feel secure, knowing that she won't tolerate harassment of any type and will listen if they bring issues to her attention.

Clearly though, Violet knows there's a situation brewing that she'll have to deal with more directly.

Question: Which four examples represent responsible behavior by a supervisor or manager which creates an environment where harassment isn't tolerated?

1. (CORRECT) Never speaking in a derogatory manner about an employee's racial background or other protected characteristics

This option is correct. You need to uphold your ethical obligation to refrain from engaging in harassing conduct yourself and model the respectful conduct you expect from your employees.

2. (CORRECT) Explaining your company's harassment policy to employees

This option is correct. You need to make sure employees are familiar with your company's harassment policy and know who to turn to if they have a complaint or feel they are being harassed. Simply having them read or sign the policy is generally not sufficient.

3. (CORRECT) Making sure employees know they're welcome to approach you if they're experiencing harassment

This option is correct. You need to cultivate an environment where employees feel secure coming to you first, before the situation gets out of hand.

4. (CORRECT) Making it clear you expect an attitude of tolerance and mutual respect in the workplace

This option is correct. You need to encourage employees to respect

differences and challenge the harassing behavior of others.

5. Prohibiting employees from telling jokes or sharing personal stories while at work

This option is incorrect. Fostering respect and equality doesn't rule out employees having some fun in the workplace. Modeling respectful behavior and expecting the same from your employees can prevent "fun" from developing into "fun at someone else's expense," which may then turn into unlawful harassment.

### Proactive management of harassment

As we've discussed, a manager's immediate response to an employee's harassing conduct can keep the situation from escalating into a much larger problem.

To deal proactively with any incident of harassing behavior, you need to deal with the incident quickly and as soon as possible after its occurrence speak to the employee who's responsible for the behavior in private specify the problematic behavior and explain why it could be considered harassment, and gain a commitment from the employee that it won't happen again

Consider this example. Suppose that during a meeting, Violet notices that Arlene makes a disparaging comment about Linda's age. Follow along as she deals with the situation at the end of the meeting.

VIOLET: Arlene could you stay behind please? I need a word with you.

ARLENE: Sure Violet. What can I do for you?

VIOLET: During the meeting, you made that remark to Linda about old dogs learning new tricks. I don't think she appreciated that.

ARLENE: She knows I was only kidding!

VIOLET: Actually, making disparaging comments about someone's age could be seen as harassment. Imagine if everyone teased her about her age.

ARLENE: Oh! I'm sorry. I didn't realize.

VIOLET: I understand, but please keep this in mind in the future.

Question: In Violet's conversation with Arlene, which actions did she take to deal proactively with potential harassment?

1. (CORRECT) She dealt with the situation as soon as possible

This is a correct option. Violet spoke to Arlene as soon as the meeting ended. By dealing with an incident of harassment as soon as possible after its occurrence, you show that you take the incident seriously. This can help prevent it from happening again.

2. (CORRECT) She spoke to Arlene privately

This option is correct. By speaking to Arlene in private, Violet showed respect and prevented Arlene from experiencing public humiliation, which could foster resentment.

3. (CORRECT) She specified the behavior and explained why it could be harassment

This is a correct option. When speaking to Arlene, Violet pointed out her offending comment and explained why it was inappropriate for the workplace. Like Arlene, employees can say things innocently without realizing that their words are hurtful and may be considered harassment.

4. She obtained a commitment that the behavior wouldn't happen again

This is an incorrect option. Violet did not do this. Although it seems that Arlene is genuinely sorry, Violet should still have obtained a commitment from Arlene that the offensive behavior wouldn't happen again

Proactively dealing with harassment

Next you'll have a chance to apply what you've learned by handling a situation involving your team and an employee you've just hired, Gabriel Kozimbo.

You have just introduced Gabriel to your team. Follow along as the team welcomes him.

CURTIS: Hi Gabriel, good to have you on the team. At your height, you're bound to give us a new perspective on things. You must be at least 6' 7"?

GABRIEL: Hi Curtis. Yes I guess I'm somewhere around there.

NIKKI: I've never heard the surname Kozimbo before? Where does it originate.

GABRIEL: Actually, I'm from Kenya.

LILI: Oh, you know what they say about Africa...its main exports are drums and dictators.

Which of the team's comments do you think could be considered discriminatory and therefore a precursor to unlawful harassment? Could it be the comment about Gabriel's height?

Commenting on how tall someone is doesn't necessarily constitute unlawful harassment because height is not a protected category. However, if the height were due to a medical condition, it could be considered discriminatory.

Each situation has to be taken in context. In this case, the comment is not likely to be considered discriminatory. Remember, though, that Gabriel could be sensitive to his height and might not appreciate people commenting on it. You might want to observe your team's future interaction with Gabriel in this regard.

Asking questions about the origins of Gabriel's surname isn't a form of harassment – it shows curiosity, rather than animosity, toward Gabriel's national origin.

Here, Nikki's tone and demeanor were friendly, so in this context the question was clearly not intended to harass Gabriel.

The joke about drums and dictators.

This comment is clearly offensive. Lili is expressing negative stereotypes about Gabriel's ancestry. This is precisely the type of comment – innocent or otherwise – that could be considered harassment because it focuses on and disparages Gabriel's national origin.

Since Lili's comment clearly has the potential to be considered discriminatory, after introducing Gabriel, you call Lili aside and ask to speak with her privately in your office.

You want to stop Lili joking about Gabriel's national origin.

In the following pages, you need to discuss Lili's comments with her to prevent harassment in the workplace.

"You wanted to talk to me?"

1. Yes. I didn't like the joke you made about African people. It wasn't funny to me at all.

Fair

This response is fair. You've expressed concern about Lili's behavior, but you haven't explained why, so Lili doesn't understand what you're trying to get across and feels picked on.

"Oh?"

2. Yes. You were way out of line, Lili. I'm not pleased with your behavior at all. I expected more from you

This response is inappropriate. You have given Lili no indication of what she's done wrong. Instead, you seem to be attacking her without good cause.

"I'm really sorry if I upset you, but I have no idea what you're talking about."

3. Yes. I'm concerned about the joke you made about Gabriel's national origin. Making jokes about someone's nationality can be construed as harassment and could create a stressful, unfriendly environment for Gabriel.

This response is appropriate. You've specified what behavior is unacceptable and explained clearly why Lili's joke is a form of harassment.

"I'm so sorry! I was just trying to break the ice. I didn't mean anything by it."

"I was trying to break the ice."

1. I understand that your intentions were good, but jokes about someone's national origin can be regarded as harassment. If everyone were to do the same, it would be very uncomfortable for Gabriel and we could all end up in court.

This response is appropriate. You respectfully specify the behavior that was inappropriate and you explain why it could be seen as harassment.

"Oh. I'm so sorry. I didn't think."

Making jokes about someone's national origin isn't breaking the ice – it's harassment.

This response is fair. Although you specify the inappropriate behavior, you haven't explained why it could be regarded as harassment. Also, your approach could be more respectful.

"I'm sorry. I didn't think."

Well breaking the ice like that isn't acceptable at this company. It was offensive and I expect more from you.

This response is inappropriate. You haven't specified the behavior or explained why it could be viewed as harassment. Also you're attacking Lili rather than handling the situation respectfully.

"I see."

"It was very insensitive of me."

Well, see to it that it doesn't happen again please.

This is a fair response. You try to obtain a commitment from Lili that it won't happen again. It would be better if you were more specific and more respectful in your approach.

"Of course. It won't happen again."

Yes it was. As a woman, you should know better.

This response is inappropriate. You make a comment about Lili's gender and you fail to gain a commitment that the behavior won't happen again.

"I apologize."

It was a mistake. In future, please avoid telling these kinds of jokes or interacting with Gabriel in a way that focuses negatively on his national origins.

This is an appropriate response. You respectfully gain a commitment from Lili that she won't behave in this way again.

"Yes, it was a mistake."

"Again, I'm sorry about that. I'll be more sensitive in the future."

Role-play:

"Has my work been of poor quality?"

CHOICE 1 It's your joke about Gabriel that was in poor taste.

This is an inappropriate response. You need to explain to Lili why the behavior is potentially harassing someone of a protected group.

"Oh. I'm sorry."

CHOICE 2 No, I'm sorry, I should have been more specific. I'm concerned about the joke you made about Gabriel's ancestry. Making jokes about someone's national origin can be seen as harassment and doesn't provide a safe and respectful environment for Gabriel.

This is an appropriate response. You specify the inappropriate behavior and explain why it could be harassment.

"I'm so sorry! I was just trying to break the ice. I didn't mean to be rude."

CHOICE 3 Your work's fine. But your joke about Gabriel's national origin was against company policy on harassment.

This is a fair response. You specify the inappropriate behavior and imply that it could be seen as harassment. It would be better if you explained why it could be harassment and if you were a little gentler in your approach.

"I'm sorry. I didn't think."

Role-play:

"I didn't mean to offend anyone."

CHOICE 1 I understand. But jokes about a person's national origin are against our harassment policy and the law. Can I count on you to be more sensitive about this in the future?

This is an appropriate response. Lili is now aware that her jokes and comments are against the law and is clearly sorry about it. You obtain a commitment from Lili not to behave in a harassing way in future without attacking her.

"It won't happen again."

CHOICE 2 Well you did. I was offended and I'm sure Gabriel was too. In fact, now I have to go smooth things over with him before he files a lawsuit!

This response is inappropriate. You need to gain a commitment from Lili that she will treat everyone with respect in the future.

"I apologize."

CHOICE 3 In the future, don't make jokes about a person's national origin.

This response is fair. You're trying to gain a commitment from Lili that it won't happen again. However, you could be gentler in your approach.

"I won't."

"If there's nothing else, I'll get back to work?"

Role-play: "I really hope I haven't hurt Gabriel's feelings."

CHOICE 1 I'm sure you can apologize and make it up to him. But can I count on you not to make any similar jokes in the future?

This response is appropriate. You're specific about how you expect Lili to conduct herself and you try to obtain a commitment from her that it won't happen again.

"Of course. It won't happen again."

CHOICE 2 Well you have. You were very insensitive.

This is an inappropriate response. You simply make Lili feel worse, rather than gaining a commitment from her that the insensitive behavior won't happen again.

"I'm sorry."

CHOICE 3 I'm sure you'll be more sensitive in the future.

This is a fair response. You imply that you need a commitment from Lili not to behave in a harassing way again. However, it would be better if you explicitly asked for a commitment from her.

"Yes. I will."

"Thanks for bringing this up with me. I'm really sorry it happened and it won't happen again."

As a manager, it's your responsibility to refrain from unlawful harassment yourself and to model the respectful conduct you expect from your employees. You should also make sure that employees are familiar with your company's harassment policy, cultivate an environment in which employees feel secure, and encourage employees to respect differences and challenge the harassing behavior of others.

## Topic 2: Managing a Harassment Complaint

Question: A Muslim employee comes to you with a complaint that two of her colleagues are trying daily to convert her to Christianity.

Which three actions should you take to deal with the complaint?

1. Explain to her that these colleagues mean well and ask her to be more tolerant of other religions in the workplace
2. (CORRECT) Explain that you take the complaint seriously and ask questions so you can really listen to what she has to say
3. (CORRECT) Ensure that you don't suggest she encouraged this treatment in any way
4. (CORRECT) Take the steps outlined in your company policy and reassure her that you will deal with the issue quickly
5. Explain that her coworkers may treat her badly when they find out she came to you, but that she should "stay strong" since it should all blow over once HR investigates

Question: Dan, an employee in another department who requires a wheelchair, complains to his manager about his coworkers who constantly refer to him as a "cripple." A short time later, his manager passes him over for a promotion with the explanation that he has a poor attitude and couldn't do the job anyway because of his disability. In fact, Dan is well qualified for the role and it is well within his physical capacity. He comes to you to discuss the situation with his manager, who is at the same level in the organization as you.

Which two actions should you take in response to Dan's complaint?

1. Tell him he's overreacting and is generally oversensitive about his disability
2. (CORRECT) Thank Dan for coming to you, listen to his story carefully, and let him know you and he should go to HR to discuss the matter with them
3. (CORRECT) Assure Dan that he need not fear retaliation for bringing his concern to you
4. Explain that you can listen to his side of the story only once you've heard his supervisor's account of what happened

Question: What three actions should you take if you are notified that a harassment charge has been filed with the EEOC against you by one of your employees?

1. (CORRECT) Report the external complaint to HR immediately

2. (CORRECT) Avoid contact with the complainant or EEOC representatives without the knowledge of HR and your company's counsel
3. (CORRECT) Don't retaliate or allow anyone else to retaliate against the complainant
4. Shred all documents relating to the complaint immediately
5. Place the complainant on suspension until the case is finalized

Question: What three actions should you take if you are notified that a harassment charge has been filed with the EEOC against you by one of your employees?

1. (CORRECT) Report the external complaint to HR immediately
2. (CORRECT) Avoid contact with the complainant or EEOC representatives without the knowledge of HR and your company's counsel
3. (CORRECT) Don't retaliate or allow anyone else to retaliate against the complainant
4. Immediately offer your apologies to the complainant
5. Ask the complainant why he or she did not report the incident internally first

Following the strategies we've discussed so far to promote a harassment-free workplace makes it much less likely that harassment will be a problem for you and your employees. However, it isn't a guarantee that harassment will never occur.

Thanks to your efforts to promote a respectful work environment, if harassment does happen, your employees will feel comfortable coming to you for help. Note that you may also receive a complaint from an employee who is not your direct report, but who doesn't feel comfortable discussing the matter with his or her manager.

Now let's explore how to respond to a complaint.

The first step in ensuring you properly handle a harassment complaint is being familiar with your company's anti-harassment policy. The policy will explain your role as a manager in the complaint process.

The complaint handling procedure may vary for different companies, but it should include formal record-keeping methods, a commitment to confidentiality, and prompt action.

Jeffrey comes to Violet's office to discuss a problem he's having with his supervisor, Graham. Follow along as Violet handles the complaint of racial harassment Jeffrey makes.

JEFFREY: I'm really not sure where to begin...it's about Graham. He's been sending me racist e-mails.

VIOLET: Oh no! Jeffrey, I'm glad you've come to me. We take harassment very seriously in our organization. Can you explain what happened a bit more?

JEFFREY: He's been sending me e-mail jokes about Indian people that I find really offensive. When I asked him to stop, he just sent more!

VIOLET: I understand. That's very serious. Our company's policy says that I should take this to HR. They'll need copies of those e-mails from Graham so they can look into this further. Do you still have copies?

JEFFREY: Yes. I'll forward the e-mails to you, if that's OK?

VIOLET: Yes, that's fine. I'll speak to HR as soon as I receive them. HR will review the e-mails and will get in touch with Graham to investigate further. They may wish to speak with you directly, as well. I'll keep you informed of the progress. Please let me know immediately if you feel Graham is trying to get back at you for coming to me. We don't tolerate retaliation of any kind.

Violet handles the complaint excellently. This scenario illustrates what you should do if an employee approaches you with a harassment complaint:

Select each action you should take for an example of how it's done.

1. keep an open mind

Even if you don't trust the complainant or feel that the complainant is overreacting, you should listen carefully and without judgment to what the person has to say.

2. follow the procedures in your company's policy, and

It's important to follow any procedures outlined in your company's policy for handling a harassment complaint. These generally include procedures for keeping records of the complaint, keeping the complaint confidential within reason, and acting quickly to address the complaint.

Most policies also require that you notify your Human Resources Department of the complaint so it gets handled properly.

3. treat the employee with respect and take the complaint seriously

You need to take all complaints seriously, even if you doubt what the

complainant tells you is true. Treating people with respect should be the goal of all interactions with your employees.

If an employee approaches you with a harassment complaint, you should be careful not to blame the complainant for the situation.

Sometimes, statements advising victims to change the way they do things, to avoid the situation in the future, could be misconstrued as "blaming" even though not intended that way.

It's also critical that you don't tolerate or engage in any retaliation against the employee for making the complaint.

Question: Suppose an employee comes to you with a complaint that she's been harassed since bringing her girlfriend to an office function. She says that she's received sexually explicit e-mails and that colleagues have belittled her since the event.

As her manager, what should you do?

1. (CORRECT) Listen to her, assuring her that you take the complaint very seriously

This option is correct. You have a responsibility to listen carefully and to take the complaint seriously.

2. (CORRECT) Withhold any judgments you might have about the employee's lifestyle

This is a correct option. When handling any harassment claim, you need to keep an open mind.

3. (CORRECT) Go through the company's policy with her, explaining how you'll follow the procedure

This option is correct. You're responsible for following the procedures in your company's policy.

4. Suggest that, in the future, she refrains from bringing her girlfriend to functions to prevent this response

This option is incorrect. This could be construed as blaming the employee who is making the complaint.

5. (CORRECT) Assure her that she will suffer no negative repercussions and ask her to report retaliation arising from her complaint

This option is correct. You should make it clear that you don't tolerate retaliation and don't retaliate yourself.

6. Tell her that sexual orientation is not a protected category in your state

This option is incorrect. Even if sexual orientation is not a protected category in your state, sex is a protected category in all states.

An employee who feels he or she is the victim of harassment can file a complaint with a governmental agency, such as the federal Equal Employment Opportunity Commission (EEOC for short), or a similar state agency.

This often happens when an employee is unable to find a resolution within the company.

You should be aware, though, that an employee is not required to seek an internal resolution before filing an external complaint.

As a manager, the most important thing to remember is that you should report any external complaints that you become aware of to your company's HR Department immediately. Also, save all correspondence related to the complaint and provide it to HR.

It's vital that you don't attempt to handle the complaint on your own – always seek help from HR or your company's legal counsel.

Although you won't play the leading role in dealing with a complaint made to the EEOC, it's useful to know about the typical steps in the EEOC's complaint resolution process.

Select each step in an EEOC response to a charge of harassment for more information about it.

1. Mediation

When an employee files a complaint with the EEOC, the EEOC will open an investigation of the charge.

The first step usually involves inviting the employee, known as the "complainant" and the company representative to sit down together with an

EEOC mediator to attempt to resolve the issue.

## 2. Further investigation

If the mediation isn't successful, or either party declines to mediate the claim, the EEOC will continue its investigation. The next stage typically involves the EEOC requesting further information from the complainant and the employer, interviewing people with knowledge of the situation, and reviewing relevant documents.

It's recommended that you retain all records relating to the issues under investigation, including electronic records.

The EEOC's goal at this point is to determine whether it believes harassment has occurred.

## 3. Decision not to pursue

If, after its investigation, the EEOC decides not to pursue the matter on behalf of the complainant, this isn't a conclusive determination that harassment has not occurred.

Instead, the EEOC will issue a "right to sue" letter, which will allow the complainant to file an independent lawsuit if he or she so chooses.

Generally a complainant cannot file an independent lawsuit based on harassment without first obtaining a "right to sue" letter from the EEOC.

## 4. Decision to pursue

If the EEOC concludes that harassment has occurred, it will issue a "letter of determination" and begin the process of conciliation.

During conciliation, the EEOC will work with the complainant and the employer to negotiate a remedy for the harassment.

If conciliation isn't successful, the EEOC may file a lawsuit on behalf of the complainant, or it may issue a "right to sue" letter so the complainant can pursue an independent lawsuit.

During an EEOC investigation, HR may request that you respond to questions, participate in interviews, and produce any documents that relate to the employee's complaint.

You may also be asked to participate in the mediation or conciliation discussions. Often the company's legal counsel will be involved in preparing the company's response to the EEOC and will represent the company at mediation and conciliation meetings.

It's important to work with HR during this process and avoid contact with the complainant or EEOC representatives without the knowledge of HR and the company's counsel.

At any time during the EEOC's investigation or conciliation process, the employee and the employer may agree on a settlement to resolve the matter, which would close the EEOC's case.

Even if the matter is ultimately resolved in the company's favor, remember that an employee's protection against retaliation extends to the external complaint process. As a manager, you must be sure not to engage in retaliation and report any retaliatory actions you may observe to HR immediately.

Question: Suppose one of your employees has filed a charge of age-based harassment against you with the EEOC and you've just received a formal notice of this.

Which two procedures should you follow to handle the matter at this point?

1. You know that the charge was a misunderstanding, so you don't respond to it

This option is incorrect. No matter what your opinions are about the case, you must respond to all charges made through the EEOC.

2. You approach the employee and try to persuade him that it was not your intention to harass him

This is an incorrect option. You should avoid contact with the complainant or EEOC representatives without the knowledge of HR and your company's counsel.

3. (CORRECT) You respond to the charge in writing only after consultation with the HR Department and corporate employment counsel, explaining your position

This option is correct. If you become aware of a complaint filed by an

employee with the EEOC or a state agency against you or your company, you should report the complaint to HR immediately. HR, often with the advice of counsel, will manage the company's response to the charge and the resolution of the complaint.

4. (CORRECT) You ensure that you don't retaliate or allow anyone else to retaliate against the complainant

This is a correct option. An employee's protection against retaliation extends to the external complaint process, even if the matter is ultimately resolved in the company's favor.

If an employee comes to you with a harassment complaint, always keep an open mind, follow the procedures in your company's anti-harassment policy, listen carefully, and take the complaint seriously. Use care not to blame the employee for what happened, and avoid retaliation.

When an external complaint about harassment is made, report the complaint to HR immediately, avoid contact with the complainant or EEOC representatives without the knowledge of HR and your company's counsel, and ensure that you don't retaliate or allow anyone else to retaliate against the complainant.