

Subtle Sexual **Harassment**

Program 1

“The Issue is Respect”

Facilitator’s Guide

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SUBTLE SEXUAL HARASSMENT

"THE ISSUE IS RESPECT"

Facilitator’s Guide

The Issue is Respect is a training program intended for managers and employees. This program focuses on the legal and practical definitions of sexual harassment, an employee's responsibility to avoid harassment in the workplace by recognizing and not engaging in behaviors that others are likely to find offensive and by clearly communicating either directly or to a supervisor or manager when an employee feels harassed.

This guide outlines three training options. The first two options require the involvement of a Leader.

Under *Option One*, the Leader will introduce the program, show the videotape, and then lead a group discussion of the questions contained in the Handout "What do You Think?". The handouts are included with this Guide to assist the Leader in facilitating this discussion.

Under *Option Two*, the Leader will take a more active role in facilitating the workshop. The Leader will introduce the program and then lead small group discussions before showing the videotape and following each dramatized scenario on the videotape. Handouts are included with this Guide to facilitate these discussions.

Finally, the program may be used as a *self-contained training* without any involvement of a leader. Simply have employees watch the videotape and complete the "Acknowledgment of Sexual Harassment Training Form" included with this packet (Handout Page 18).

We have included a Sample Sexual Harassment Policy with the handouts for this program. If your company has not already implemented such a policy we encourage you to do so and to use this training to introduce the policy to your employees.

*This Facilitator’s Guide and the accompanying materials were prepared by
Candy S. Marshall, Attorney at Law and Human Resource Consultant.*

OPTION ONE

I. Introduce the Program [10 minutes].

A. Introduce Yourself.

Welcome the participants to the program and explain who you are and what your role is as program leader.

B. Review the Objectives of the Program.

Use the Handout "Objective of this Program" to introduce the program. Emphasize that the organization takes the issue of sexual harassment seriously and wants all employees to have a work environment free from sexual harassment.

Explain that the participants will watch a videotape that uses interviews with legal and human resource professionals as well as real-life scenarios to help explore the subtleties of sexual harassment in the work environment.

C. Ask Participants to Introduce Themselves.

II. Show the Videotape, The Issue is Respect [28 minutes].

III. Group Discussion [30 to 45 minutes].

(If this is a training group of supervisors, replace this section with the "Group Discussion" on page 2 of the Program II -- "Management's New Responsibilities" Leader's Guide.)

Following the video program, ask the participants to work in small groups of three or four and answer the questions contained on the Handout "What Do You Think?". [10 minutes]. Then ask persons to volunteer their answers to each question and have the entire group discuss their ideas. The following points should be emphasized in the discussion of the questions.

A. Question One: I Believe Sexual Harassment Occurs When...

Use the Handout "Important Facts About Sexual Harassment" to facilitate the discussion of this question. Key points to cover include ...

1. Disparity of Power.

Sexual harassment occurs most often when there is a disparity of power between two individuals. An obvious example is when a supervisor sexually harasses a subordinate, but peers can be in positions of power over one another too. Examples are when someone has more seniority, is a friend of the supervisor, people of one gender outnumber the other or someone has a dominant personality. Non-employees, e.g., customers or clients, can also be in positions of power.

2. Intent is not necessary.

An employee or manager does not have to intend to harass another in order for it to be viewed as sexual harassment. Intent is relevant only in deciding what corrective action should be taken; obviously, if an employee intended to sexually harass another employee the disciplinary action should be more severe.

3. What is offensive is in the "eye of the beholder."

When deciding whether behavior is offensive, it should be looked at from the viewpoint of the victim, not the harasser or others in the group. One employee might be offended by certain behavior that others in the group believe acceptable.

4. Men can be sexually harassed.

While the majority of sexual harassment complaints are made by women, men can be victims of sexual harassment. In the past it has been socially unacceptable for men to complain of harassment because of stereotypical notions that men "like harassment" or "ought to be able to handle it."

5. People of the same gender can harass each other.

Men can harass other men; women can harass other women. This harassment could be, but does not have to be, based on homosexuality.

B. Question Two: Behaviors that Constitute Sexual Harassment include ...

Use the Handouts "The Legal Definition of Sexual Harassment" and "The Practical Definition of Sexual Harassment" to facilitate the discussion of this question.

Harassment can be "sexual" in either of two ways: (1) it can actually pertain to sexuality, or (2) it can be gender based, that is be directed at someone because of their gender. An example of gender based sexual harassment is when a male employee harasses and intimidates his female co-workers because they are women while he treats his male co-workers with respect.

C. Question Three: Sexual Harassment Victims may Not Complain because...

Co-workers often do not understand why a victim could have a difficult time telling the harasser to stop the offensive behaviors. This lack of understanding may cause the co-workers to be less sensitive to the victim's situation and less supportive. Use the handout "Why a Person Might Not Complain about Harassment" to explore some of the reasons victims do not "speak out."

D. Question Four: Harassment Can Best be Handled or Prevented by ...

1. Direct Communication.

Stress the importance of an employee directly communicating to the harasser that s/he feels uncomfortable and wants the behavior to stop.

2. Contacting Supervisor, Manager, or Human Resource Director.

If an employee tries to stop the harassment but it continues to occur, or the employee feels that s/he needs assistance to stop the behavior, the employee should immediately contact his/her supervisor, a manager, or a human resource director.

E. Question Five: My Organization's Sexual Harassment Policy is ...

Handout the organization's policy and have the participants read and discuss it. Emphasize that no employee may be retaliated against for making a sexual harassment complaint.

IV. Concluding the Program [5 minutes].

(If this training is for a group of supervisors who will be seeing Program Two -- **Management's New Responsibilities**, skip this conclusion and proceed to the second program.)

Emphasize that: (1) every employee deserves to have a work environment free from sexual harassment; (2) if an employee feels that s/he is being harassed, the employee should tell the harasser to stop the behavior; (3) if an employee tries to stop the behavior and it does not work, or the employee is unable to directly confront the harasser, s/he should immediately contact a non-involved supervisor; and (4) the organization will conduct a fair, confidential investigation of all harassment complaints and take the appropriate corrective action to assure that any harassment stops.

Have the employee complete an "Acknowledgment Of Sexual Harassment Training" Form (Handout Page 18). Thank them for their participation and encourage them to direct any questions they might have to the appropriate person.

OPTION TWO

I. Introducing the Program [10 minutes].

A. Introduce Yourself.

Welcome the participants to the program and explain who you are and what your role is as program leader.

B. Review the Objectives of the Program.

Use the Handout "Objective of this Program" to introduce the program. Emphasize that the organization takes the issue of sexual harassment seriously and wants all employees to have a work environment free from sexual harassment.

Explain that the participants first do a group exercise that will give them the opportunity to share their thoughts about why harassment occurs, what it is, and what should be done about it. The participants will then watch a videotape that uses interviews with legal and human resource professionals as well as dramatized scenarios to help explore the subtleties of sexual harassment in the work environment.

C. Ask Participants to Introduce Themselves.

II. Group Discussion [30 to 45 minutes].

Ask the participants to work in small groups of three or four and answer the questions contained on the Handout "What Do You Think?". [10 minutes]. Then ask persons to volunteer their answers to each question and have the entire group discuss their ideas. The points that should be emphasized in the discussion of these questions are addressed above in the discussion of Option One.

III. The Videotape, The Issue is Respect

Start the videotape. Stop it following each of the four scenarios and give the participants the Handout for that Scenario. Have the participants answer the questions in the Handout (either in small groups, groups of all men and all women, or individually). Then discuss the participants' answers with them as a group using the Leader's Guide to assist you in directing the discussion. Following a brief discussion of the participants answers, return to the videotape for the legal and human resource professionals discussion of the same questions.

SCENARIO ONE -- ***FITTING IN***

Is Nancy a victim of sexual harassment?

(Explain that up until this point in time, Nancy did not clearly communicate with her co-workers that their behavior was unwelcome. If the behavior continues after she brings it to her manager's attention, then it will constitute illegal sexual harassment because Nancy will have clearly communicated that the behavior was unwelcome.)

Why did Nancy do nothing to stop the behavior that she found offensive?

(Discuss the fact that employees are often afraid to speak out because of the fear of rejection by their co-workers, and the desire to "fit in.")

Should Nancy have reacted differently?

(Stress the importance of employees communicating early on that they are uncomfortable with sexually offensive behavior and want the behavior to stop. Stress that if the employee is afraid to do this or tries to do it and the behavior continues, the employee should immediately go to their supervisor, manager, or a human resource director for assistance in getting the behavior to stop.)

Did the other employees do something wrong? What should they have done?

(The other employees should have been more sensitive and recognized that Nancy might have been offended by the behavior and that it would have been very difficult for her to complain. Because it is difficult to know whether sexual joking and banter is offending someone in the group, it is best not to engage in such behavior in the work environment.)

What lessons might we learn from this scenario?

(It is important to communicate clearly your discomfort with sexual joking and banter in the workplace. Remaining silent or joining in the behavior is likely to send the signal that you welcome such behavior. Employees should avoid sexual banter and joking that is likely to offend someone in the group.)

SCENARIO TWO -- ***TRYING TO BE NICE***

Is this a case of sexual harassment?

(Explain that this could constitute sexual harassment because Deborah is offended by Jeff's advances, but that Deborah may not have made it clear that she found the conduct unwelcome. Focus on the fact that while she initially told him she did not want to see him socially, she may have sent mixed signals after that by not being clear that she did not want to have anything other than a working relationship with him.)

How would you respond if Jeff said he was just being friendly to a new colleague?

(Jeff needs to understand that Deborah perceives him as being "overly" friendly and his behavior toward her must change. Explain that behavior must be viewed from the perspective of the victim in deciding whether it is sexual harassment).

Do we risk losing all human interaction because of our concerns about sexual harassment?

(The prevention of sexual harassment in the workplace does not mean that we cannot communicate with each other as human beings. It does mean that we need to respect each other's sensitivities and if one person does not share an attraction to another, that needs to be respected.)

What, if anything, should Deborah have done to better manage the situation?

(She should have clearly communicated to Jeff that, while she appreciated his attempts to be friendly and make her feel welcome, his friendliness was making her feel uncomfortable, she did not want to have lunch with him, preferred that he not give her gifts and did not want him to visit her at her home.)

What should Jeff have done differently?

(When Deborah told Jeff that she did not want to see him socially, he should have respected her wishes and not "pursued" her friendship in the manner he did. He should not have given her a card or rose, he should have waited for her to invite him to lunch and he should not have visited her at her home.)

SCENARIO THREE: ***THE PROMOTION***

If Anne chooses Judy, is Bill a victim of sexual harassment?

(If Anne does not promote Bill in order to retaliate for his ending their relationship, Bill is a victim of *quid pro quo* sexual harassment. Anne will have to show that Judy is selected because she is most qualified; however, this may be difficult to do because Bill had better performance reviews.)

If Anne chooses Bill, is Judy a victim of sexual harassment?

(Favorable treatment of an employee based on an isolated romantic relationship is not sufficient to constitute sexual harassment. However, if there is any element of coercion in Anne's promotion of Bill, i.e., Anne is attempting to coerce Bill into continuing the relationship, then it could be sexual harassment of both Bill and Judy. Also, if there is a pattern of employees getting promoted because of their willingness to have sexual relationships with those in management, then Judy could claim that she has been sexually harassed.)

What could Anne and Bill have done to avoid this situation?

(When Anne was presented with the opportunity to be promoted to Bill's supervisor, she should have disclosed the relationship to her manager and, if there was no way to avoid the supervisor/subordinate relationship, Anne should have turned down the promotion opportunity.)

What should Anne do now?

(Anne should tell her manager about the situation and ask him to determine who is most qualified for the promotion.)

Is there room for romantic relationships in the work environment?

(This scenario illustrates the potential problems inherent in a romantic relationship between a supervisor and subordinate. Either the employee in the relationship or other employees in the work group may perceive that they are being treated unfavorably. Furthermore, if the subordinate ends the relationship, the supervisor's future actions with regard to that subordinate may be seen as retaliation.

These same problems are not inherent in relationships between co-workers. Given that employees will be attracted to one another, it generally is not advisable to prohibit such romantic relationships.)

SCENARIO FOUR: ***TAKE IT LIKE A MAN***

Is Michelle a victim of sexual harassment?

(Michelle is probably a victim of both quid pro quo and hostile environmental harassment. It is quid pro quo harassment because the supervisor told her that sexual harassment was a condition of her job, and it constitutes a hostile environment because her co-workers' negative behavior seems to be occurring because of her gender.)

Is it sexual harassment if male employees also go through a similar "initiation" process?

(In this circumstance it could still be sexual harassment because at least part of the harassment, i.e., the inappropriate "art" on her locker, is sexual in nature. If a new male employee was subjected to this same sexually offensive conduct, he too could have a sexual harassment complaint.)

What special problems can face women entering a traditionally male workplace?

(There is often resentment toward women who are entering what are viewed as traditionally male occupations. The men in these positions may not be comfortable working with women, may feel that a woman is not qualified for the job and may feel that they no longer can have "fun" after a woman joins the team. Job security issues may also arise.)

What needs to be done in this work environment? What is missing?

(First, the organization and the manager need to take a strong position that they will not tolerate harassment of employees in the workplace. The manager should counsel and, if necessary, discipline those co-workers who engaged in the inappropriate behavior. In addition, the employees should be educated as to what constitutes sexual harassment, the impacts of sexual harassment upon victims, harassers and other employees, and the importance of treating all employees, whether men or women, with respect.)

Is there anything Michelle can or should do to improve her work environment?

(Michelle should clearly communicate to her co-workers that she will not tolerate sexual harassment. In addition, Michelle should go to Phil's manager or the human resource director to get assistance in resolving this problem.)

IV. Concluding the Program [5 minutes].

(If this training is for a group of supervisors who will be seeing Program Two - **Management's New Responsibilities**, skip this conclusion and proceed to the second program.)

Emphasize that: (1) every employee deserves to have a work environment free from sexual harassment; (2) if an employee feels that s/he is being harassed, the employee should tell the harasser to stop the behavior; (3) if an employee tries to stop the behavior and it does not work, or the employee is unable to directly confront the harasser, s/he should immediately contact a non-involved supervisor; and (4) the organization will conduct a fair, confidential investigation of all harassment complaints and take the appropriate corrective action to assure that any harassment stops.

Have the employee complete an "Acknowledgment Of Sexual Harassment Training" Form (Handout Page 18). Thank them for their participation and encourage them to direct any questions they might have to the appropriate person.

Subtle Sexual Harassment

Program 2

**“Management’s New
Responsibilities”**

Facilitator’s Guide

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SUBTLE SEXUAL HARASSMENT

"MANAGEMENT'S NEW RESPONSIBILITIES"

Facilitator's Guide

MANAGEMENT'S NEW RESPONSIBILITIES is a training program intended for supervisors, managers, and human resource professionals (referred to as supervisors throughout this Guide.) This program focuses on the legal and practical definitions of sexual harassment and a supervisor's role in both preventing sexual harassment and in taking immediate corrective action when sexual harassment occurs in the work environment.

It is strongly recommended that supervisors view Program One in the Subtle Sexual Harassment series - **THE ISSUE IS RESPECT**, before completing their training with this second program.

MANAGEMENT'S NEW RESPONSIBILITIES may be used in one of three ways.

The first two options require the involvement of a Leader. Under *Option One* the Leader will introduce the program, show the videotape and then lead a group discussion of the questions contained in the Handout "What do You Think?". Handouts are included with this Guide to assist the Leader in facilitating this discussion.

Under *Option Two* the Leader will take a more active role in facilitating the workshop. The Leader will introduce the program and then lead small group discussions before showing the videotape and at designated intervals following each dramatized scenario on the videotape. Handouts are included with this Guide to facilitate these discussions.

Finally, this tape may be used as a self-contained program without any involvement of a leader simply by having participants watch the videotape and complete an "Acknowledgment of Management Training" form (Handout Page 19) before leaving.

We have included a Sample Sexual Harassment Policy with the handouts for this program. If your company has not already implemented such a policy we encourage you to do so and to use this training to introduce the policy to your employees.

*This Facilitator's Guide and the accompanying materials were prepared by
Candy S. Marshall, Attorney at Law and Human Resource Consultant.*

OPTION ONE

(Skip Section I if the supervisors have already seen Program One -

The Issue is Respect.)

I. Introducing the Program [10 minutes].

A. Introduce Yourself.

Welcome the participants to the program and explain who you are and what your role is as program leader.

B. Review the Objectives of the Program.

Use the Handout "Objectives of this Program" to introduce the program. Emphasize that the organization takes the issue of sexual harassment seriously and that all employees have the legal right to work in an environment free from sexual harassment. Supervisors are legally responsible for maintaining such an environment. This means that managers must be able to identify sexual harassment, take steps to prevent it, and respond effectively to harassment if it happens.

Explain that the participants will watch a videotape that uses interviews with lawyers, psychologists, and human resource professionals as well as dramatized scenarios to help explore the subtleties of sexual harassment in the work environment and to examine a supervisor's legal responsibilities.

C. Ask Participants to Introduce Themselves.

II. Show the Videotape, MANAGEMENT'S NEW RESPONSIBILITIES [28 minutes].

III. Group Discussion [30 to 45 minutes].

(If this is a training group of supervisors who have seen Subtle Sexual Harassment Program One - **The Issue is Respect**, skip this section and replace it with a discussion of the 4 dramatizations we have just seen using the questions on pages 7-10 of this Guide to generate discussion.)

Following the video program, ask the participants to work in small groups of three or four and answer the questions contained on the Handout "What Do You Think?". [10 minutes]. Then ask persons to volunteer their answers to each question and have the entire group discuss their ideas. The following points should be emphasized in the discussion of each question:

A. Question One: I Believe Sexual Harassment Occurs When...

Use the Handout "Important Facts About Sexual Harassment" to facilitate the discussion of this question. The following points should be emphasized.

1. Disparity of Power.

Sexual harassment occurs most often when there is a disparity of power between two individuals. This disparity of power exists between a supervisor and his/her subordinate. While supervisors may not see themselves in positions of power, they are often viewed that way by the employees who report to them. Thus, it is particularly important that supervisors be aware of their own behaviors that could be perceived as harassment.

Peers can also be in positions of power over one another. Examples are when someone has more seniority, someone is a friend of the supervisor, people of one gender outnumber the other or someone has a dominant personality. Non-employees, e.g., customers or clients, can also be in positions of power.

2. Intent is not necessary.

An employee or manager does not have to intend to harass another in order for it to be viewed as sexual harassment. Intent is relevant only in deciding what corrective action should be taken; obviously, if one employee intended to sexually harass another employee the disciplinary action should be more severe.

3. What is offensive is in the "eye of the beholder."

When deciding whether behavior is offensive, it should be looked at from the viewpoint of the victim, not the harasser or others in the group. One employee might be offended by certain behavior that others in the group believe acceptable.

4. Men can be sexually harassed.

While the majority of sexual harassment complaints are made by women, men can be victims of sexual harassment. In the past it has been socially unacceptable for men to complain of harassment because of stereotypical notions that men "like harassment" or "ought to be able to handle it."

5. People of the same gender can harass each other.

Men can harass men; women can harass women. This harassment could be, but does not have to be, based on homosexuality.

B. Question Two: Behaviors that Constitute Sexual harassment include...

Use the Handouts "The Legal Definition of Sexual Harassment" and "The Practical Definition of Sexual Harassment" to facilitate the discussion of this question.

Harassment can be "sexual" in either of two ways: (1) it can actually pertain to sexuality, or (2) it can be gender based, that is be directed at someone because of their gender. An example of gender based sexual harassment is when a male employee harasses and intimidates his female co-workers because they are women while he treats his male co-workers with respect.

C. Question Three: Sexual Harassment Victims may not Complain because...

Supervisors and co-workers often do not understand why a victim could have a difficult time telling the harasser to stop the offensive behaviors. This lack of understanding may cause the supervisors and co-workers to be less sensitive to the victim's situation and less supportive. Use the handout "Why a Person Might Not Complain about Harassment" to explore some of the reasons victims do not "speak out."

D. Question Four: Sexual Harassment Can be Handled/Prevented by...

1. Maintaining a Harassment-Free Environment.

Supervisors should set the tone for their work environments. This can be done in three ways. First by the supervisors modeling appropriate behavior -- the supervisor must treat employees with respect if s/he expects employees to treat each other that way. Second, supervisors must be aware of the types of behavior that might be construed as sexual harassment and then take steps to eliminate those behaviors (e.g., telling dirty jokes.) Finally, it is a supervisor's responsibility to help educate employees as to the types of behavior that could be construed as sexual harassment, that employees have the right to work in an environment free from such harassment and that employees should communicate directly when they feel they are being harassed or go to a non-involved supervisor if an employee is unable to communicate directly.

2. Responding Effectively to Sexual Harassment Complaints.

Both the organization and a supervisor are legally liable for sexual harassment if (1) the supervisor knows or has reason to know of the harassment, and (2) fails to take the appropriate corrective action. Use the Handout "Who is Liable For Sexual Harassment?" to explore the liability principles. Thus, it is essential that supervisors take all sexual harassment complaints seriously, conduct a fair investigation of the facts and take the necessary corrective action to assure that any harassment stops and that the victim is "made whole."

E. Question Five: My Organization's Sexual Harassment Policy is ...

Handout the organization's policy and have the employees read and discuss it. Emphasize that no employee may be retaliated against for making a sexual harassment complaint.

IV. Concluding the Program [5 minutes].

Emphasize that: (1) every employee deserves to have a work environment free from sexual harassment; (2) supervisors are responsible for maintaining an environment free from harassment by modeling appropriate behavior, addressing behavior that could be construed as harassment and educating employees about their rights; (3) supervisors are legally responsible for taking the appropriate corrective action once they know or have reason to know of sexual harassment in the work environment; and (4) the supervisor should conduct a fair, confidential investigation of all harassment complaints and take the appropriate corrective action to assure that any harassment stops.

Thank the supervisors for their participation and encourage them to direct any additional questions they might have to the appropriate person. Have each participant fill in an "Acknowledgment of Management Training" form (Handout Page 19) before leaving.

OPTION TWO

I. Introducing the Program [10 minutes].

(Skip Section I if the supervisors have already seen Program One - **The Issue is Respect.**)

A. Introduce Yourself.

Welcome the participants to the program and explain who you are and what your role is as program leader.

B. Review the Objectives of the Program.

Use the Handout "Objective of this Program" to introduce the program. Emphasize that the organization takes the issue of sexual harassment seriously and that all employees have the legal right to work in an environment free from sexual harassment. Supervisors are legally responsible for maintaining such an environment. This means that managers must be able to identify sexual harassment, take steps to prevent it and respond effectively to harassment if it happens.

Explain that the participants first do a group exercise that will give them the opportunity to share their thoughts about why harassment occurs, what it is and what supervisors should do to prevent/handle it. The participants will then watch a videotape that uses interviews with lawyers, psychologists and human resource professionals as well as dramatized scenarios to help explore the subtleties of sexual harassment in the work environment.

C. Ask Participants to Introduce Themselves.

II. Group Exercise [30 to 45 minutes].

Ask the participants to work in small groups of three or four and answer the questions contained on the Handout "What Do You Think?". [10 minutes]. Then ask participants to volunteer their answers to each question and have the entire group discuss their ideas. The points that should be emphasized in the discussion of these questions are addressed above in the discussion of Option One.

III. The Videotape, "MANAGEMENT'S NEW RESPONSIBILITIES" [28 minutes].

Start the videotape. Stop it following each of the four scenarios and give the participants the Handout for that Scenario. Have the participants answer the questions in the Handout (either in small groups, groups of all men and all women or individually.) Then discuss the participants' answers with them as a group using the Leader's Guide to assist you in directing the discussion. Following a brief discussion of the participants answers, return to the videotape for the legal and human resource professionals' discussion of the same questions.

SCENARIO ONE: **RUMORS**

Can rumors and gossip constitute sexual harassment? Why or why not?

(Rumors and gossip could constitute sexual harassment if they are sexual in nature and are pervasive enough to create a hostile environment.)

What could management have done to avoid this situation?

(Management should have made it clear that Cindy was the most qualified person for the promotion.)

What should management do now?

(Cindy's manager should speak with Harvey and Kim and explain that their conversations have been overheard and have hurt Cindy's feelings. The manager should explain that the rumors are not true, only serve to hurt others in the work environment and should stop immediately.)

What liability do the employer and manager have in this scenario?

(In this instance, the rumors may not be pervasive enough to constitute sexual harassment. Even if they were, both the employer and the manager could avoid liability for what has happened up to this point in time if they now take the appropriate corrective action.)

SCENARIO TWO: *POLLUTING THE ATMOSPHERE*

Is Betsy a victim of sexual harassment even though these remarks were not aimed at her?

(Yes, Betsy has been a victim of sexual harassment. This behavior has created a hostile environment for her even though it is not directed at her.)

What could the supervisor have done to avoid this situation?

(Prior to Betsy joining the group, the supervisor should have advised the male employees that their conversations could offend others in the work environment and, therefore, were inappropriate. The supervisor could also have introduced Betsy to the team so they would be more accepting of her as a co-worker.)

What steps should the supervisor take to resolve this situation?

(The supervisor should counsel the co-workers that their comments are inappropriate and unacceptable and ask them to stop making them. If the co-workers are aware of Betsy's complaint, the supervisor should warn them that they cannot retaliate against Betsy for bringing her concerns to management's attention.)

How can the supervisor avoid any retaliation against Betsy by the men in her department?

(The supervisor should tell Betsy that any retaliation against her will not be allowed and that if she feels there is such retaliation, she should let the supervisor know immediately. The supervisor should also tell her co-workers that the company wants people to feel comfortable raising these issues and that they cannot retaliate against Betsy because she did so.)

What is the employer's liability? If the supervisor was involved in the behavior, does the employer's liability change?

(The employer is liable for this behavior only if it knew or had reason to know that it was occurring and failed to take prompt effective action to stop it. If the supervisor was involved, either because he knew it was occurring or because he himself was engaging in the behavior, the employer may have severe liability.)

SCENARIO THREE: *WHO IS HARASSING WHOM?*

Is this sexual harassment and, if yes, who is liable?

(This one incident is not sufficient to constitute a hostile environment. However, if Carol's employment is in any way conditioned on her agreeing to date Chuck, it could constitute *quid pro quo* harassment.)

If Eva was Carol's supervisor, could this be a more serious case?

(The situation would be more serious because now it would be a supervisor suggesting that it is a condition of Carol's employment that she date a customer.)

How should Carol's manager resolve this situation?

(Carol's manager should counsel Eva that it is not a part of any employee's job nor is it appropriate that she be asked to date a customer. Then either the manager and/or Eva should counsel the customer that while they value his business, the company will not require that Carol go to dinner with him.)

Could this situation have been avoided?

(This situation could have been avoided by the organization clearly communicating its policy against harassment and making it clear to employees that no employee should be subject to the harassment or abuse of a customer.)

SCENARIO FOUR: **A CHANGE OF HEART**

Does this constitute harassment, and if so, why?

(If Mike is changing his employment expectations because it no longer appears that Delores is available to date him, it is *quid pro quo* harassment. This could also have constituted a hostile environment if Delores had made it clear that she did not welcome Mike's advances.)

Who is liable for this harassment?

(The employer is strictly liable for Mike's *quid pro quo* harassment. If Mike is a senior manager in the organization and has created a hostile environment, the employer could also be strictly liable for his behavior. Mike is liable in either event as the harasser. Karen could be liable if the evidence shows that she knew that Delores was uncomfortable with Mike's advances and she failed to take corrective action.)

Did Karen make a mistake in judgment by not taking immediate action when she became aware of the attention Mike was paying to Delores? What could she have done to avoid this situation?

(Karen should have counseled Mike that, because he is in a supervisory position, his "attention" to Delores could be perceived as harassment. Karen could also have spoken with Delores to find out if she was uncomfortable with Mike's behavior.)

What steps should Karen take now?

(Karen should investigate this situation. She should interview Mike to find out if and why he has changed his performance expectations. If she determines that Mike has changed his expectations because Delores will not date him, she should warn Mike that any future behavior is grounds for immediate dismissal. Karen should also consider transferring Mike or removing him from a supervisory position in order to protect Delores from retaliation.)

IV. Concluding the Program [5 minutes].

Emphasize that: (1) every employee deserves to have a work environment free from sexual harassment; (2) supervisors are responsible for maintaining an environment free from harassment by modeling appropriate behavior, addressing behavior that could be construed as harassment and educating employees about their rights; (3) supervisors are legally responsible for taking the appropriate corrective action once they know or have reason to know of sexual harassment in the work environment; and (4) the supervisor should conduct a fair, confidential investigation of all harassment complaints and take the appropriate corrective action to assure that any harassment stops.

Thank the supervisors for their participation and encourage them to direct any additional questions they might have to the appropriate person. Have each participant fill in an "Acknowledgment of Management Training" form (Handout Page 19) before leaving.

Subtle Sexual Harassment

Programs 1 & 2

**“The Issue is Respect”
“Management’s New Responsibilities”**

HANDOUTS

**Designed for easy photocopying.
Please make copies for all training participants.**

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OBJECTIVES OF THIS PROGRAM

Sexual harassment is a serious issue in the workplace. It has a negative impact on the victim, can result in disciplinary action (including termination) for the harasser, and can create legal liability for the employer. No one wins.

The objectives of this program are:

1. To prevent sexual harassment in the workplace by developing a clear understanding of what sexual harassment is and how it impacts people;
2. To explore the responsibility of each employee to help maintain an environment free from harassment by being aware of behaviors that can offend people and by clearly communicating that offensive behavior must stop;
3. To understand the role of a supervisor, manager, or human resource manager in addressing sexual harassment in the workplace; and
4. To develop an environment where employees respect and value each other as individuals.

SEXUAL HARASSMENT: WHAT DO YOU THINK?

1) I believe sexual harassment occurs when:

2) List behaviors that could constitute sexual harassment:

3) People who are being harassed may not complain because:

4) I believe that incidents of sexual harassment can be prevented/handled by:

5) My organization's policy on sexual harassment is:

IMPORTANT FACTS ABOUT SEXUAL HARASSMENT

- * Sexual harassment generally occurs when there is a disparity of power, not just when men and women are working together.
- * Sexual harassment does not have to be intentional.
- * What is offensive is in the "eye of the beholder."
- * Men can be sexually harassed.
- * Men can harass men; women can harass women.
- * Harassment does not have to be directed at a particular individual.
- * Offenders can be supervisors, co-workers, or non-employees (customers, vendors, suppliers).

THE LEGAL DEFINITION OF SEXUAL HARASSMENT

Sexual harassment is a form of gender discrimination and violates both Title VII of the 1964 Civil Rights Act as well as State discrimination laws. The Equal Employment Opportunity Commission (EEOC) is the federal agency that enforces the federal law.

The EEOC's guidelines define sexual harassment as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

- > Submission to such conduct is made an implicit or explicit condition of employment;
- > Submission to or rejection of such conduct affects employment opportunities; or
- > The conduct interferes with an employee's work or creates an intimidating, hostile, or offensive work environment.

THE PRACTICAL DEFINITION OF SEXUAL HARASSMENT

In practical terms, there are two kinds of sexual harassment:

Quid Pro Quo: Where employment decisions or expectations (e.g., hiring decisions, promotions, salary increases, shift or work assignments, performance expectations) are based on an employee's willingness to grant or deny sexual favors. Examples of quid pro quo harassment:

- * Demanding sexual favors in exchange for a promotion or a raise.
- * Disciplining or firing a subordinate who ends a romantic relationship.
- * Changing performance expectations after a subordinate refuses repeated requests for a date.

Hostile Environment: Where verbal or non-verbal behavior in the workplace: (1) focuses on the sexuality of another person or occurs because of the person's gender, (2) is unwanted or unwelcome and (3) is severe or pervasive enough to affect the person's work environment.

The following are examples of behaviors that can create a hostile environment if they are unwanted and uninvited:

- * Off-color jokes or teasing
- * Comments about body parts or sex life
- * Suggestive pictures, posters, calendars or cartoons
- * Leering, stares or gestures
- * Repeated requests for dates
- * Excessive attention in the form of love letters, telephone calls or gifts
- * Touching -- brushes, pats, hugs, shoulder rubs or pinches
- * Assault/rape

WHY VICTIMS DO NOT SPEAK OUT -- FEARS

Fear of loss of job opportunities

Fear of rejection by co-workers

Fear of being labeled a "trouble-maker" or a "feminist"

Fear of not being considered a "team player"

Fear of being accused of not having a "sense of humor"

Fear of the "rumor mill"

Fear of being labeled "over-sensitive" or "mentally unstable"

Fear of not being believed

Fear of being "wrong"

WHO IS LIABLE FOR SEXUAL HARASSMENT?

Quid Pro Quo Harassment:

- > Harasser is always liable
- > Employer is always liable

Hostile Environment:

- > Harasser is always liable
 - > Employer is liable for harassment by manager/supervisor involved
 - > Employer and Manager/Supervisor liable for harassment by supervisor, co-worker or outsider if:
 1. Knew or had reason to know and failed to take prompt, effective action
- Or
2. Didn't have anti-harassment policy and proper complaint procedures in place

SEE THE UPDATE ON HARASSMENT LAW ON PAGE 20

EEOC GUIDELINES ON DISCRIMINATION BECAUSE OF SEX

The Equal Employment Opportunity Commission's Guidelines on Discrimination Because of Sex contain guidelines that deal specifically with sexual harassment. The Guidelines read as follows:

(a) Harassment on the basis of sex is a violation of § 703 of Title VII. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individuals' work performance or creating an intimidating, hostile or offensive work environment.

(b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incident has occurred. The determination of the legality of a particular action will be made from the facts, on a case-by-case basis.

(c) Applying general Title VII principles, an employer, employment agency, joint apprenticeship, committee or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisor or agency capacity.

(d) With respect to conduct between the fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer, its agents or supervisory employees, knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

EEOC Guidelines - Continued

(e) An employer may also be responsible for the acts of non employees, with respect to sexual harassment of employees in the workplace, where the employer, its agents or supervisory employees, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases, the commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non employees.

(f) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing the strongest disapproval, developing appropriate sanctions, informing employees of their rights to raise and how to raise the issue of harassment under Title VII, and developing methods to sensitize all concerned.

(g) Other Related Principles: [Superseded by the EEOC Policy Guidance on Employer Liability for Sexual Favoritism].

THE ISSUE IS RESPECT

SCENARIO ONE -- *FITTING IN*

Is Nancy a victim of sexual harassment?

Why did Nancy do nothing to stop the behavior that she found offensive?

Should Nancy have reacted differently?

Did the other employees do something wrong? What should they have done?

What lessons might we learn from this scenario?

THE ISSUE IS RESPECT

SCENARIO TWO -- *TRYING TO BE NICE*

Is this a case of sexual harassment?

How would you respond if Jeff said he was just being friendly to a new colleague?

Do we risk losing all human interaction because of our concerns about sexual harassment?

What, if anything, should Deborah have done to better manage the situation?

What should Jeff have done differently?

THE ISSUE IS RESPECT

SCENARIO THREE: *THE PROMOTION*

If Anne chooses Judy, is Bill a victim of sexual harassment?

If Anne chooses bill, is Judy a victim of sexual harassment?

What could Anne and Bill have done to avoid this situation?

What should Anne do now?

Is there room for romantic relationships in the work environment? Could they be eliminated even if we wanted to do so?

THE ISSUE IS RESPECT

SCENARIO FOUR: *"TAKE IT LIKE A MAN"*

Is Michelle a victim of sexual harassment?

Is it sexual harassment if male employees also go through a similar "initiation" process?

What special problems can face women entering a traditionally male workplace?

What needs to be done in this work environment? What is missing?

Is there anything Michelle can or should do to improve her work environment?

MANAGEMENT'S NEW RESPONSIBILITIES

SCENARIO ONE: *RUMORS*

Can rumors and gossip constitute sexual harassment? Why or why not?

What could management have done to avoid this situation?

What should management do now?

What liability do the employer and manager have in this scenario?

MANAGEMENT'S NEW RESPONSIBILITIES

SCENARIO TWO: *POLLUTING THE ATMOSPHERE*

Is Betsy a victim of sexual harassment even though these remarks were not aimed at her?

What could the supervisor have done to avoid this situation?

What steps should the supervisor take to resolve this situation?

How can the supervisor avoid any retaliation against Betsy by the men in her department?

What is the employer's liability? If the supervisor was involved in the behavior, does the employer's liability change?

MANAGEMENT'S NEW RESPONSIBILITIES

SCENARIO THREE: *WHO IS HARASSING WHOM?*

Is this sexual harassment and, if yes, who is liable?

If Eva were Carol's supervisor, could this be a more serious case?

How should Carol's manager resolve this situation?

Could this situation be avoided?

MANAGEMENT'S NEW RESPONSIBILITIES

SCENARIO FOUR: *A CHANGE OF HEART*

Does this constitute harassment, and if so, why?

Who is liable for this harassment?

Did Karen make a mistake in judgment in not taking immediate action when she became aware of the attention Mike was paying to Delores? What could she have done to avoid this situation?

What steps should Karen take now?

What further complications or repercussions should be avoided and how?

ACKNOWLEDGMENT OF SEXUAL HARASSMENT TRAINING

I acknowledge that on _____, I attended sexual harassment sensitivity training entitled "The Issue is Respect" and that I understand that: (1) I have the right to work in an environment free from sexual harassment, and (2) I have a responsibility not to engage in behaviors that constitute sexual harassment; and (3) if I feel I am being harassed, I have the right and responsibility to either communicate this directly to the harasser or to a non-involved supervisor.

(Print)

(Sign)

ACKNOWLEDGMENT OF MANAGEMENT TRAINING

I acknowledge that on _____, I attended sexual harassment sensitivity training entitled "Management's New Responsibilities" and that I understand that: (1) every employee has the right to work in an environment free from sexual and other harassment, (2) I have a responsibility not to engage in behaviors that constitute sexual harassment; and (3) if I feel I am being harassed, I have the right and responsibility to either communicate this directly to the harasser or to a non-involved supervisor; and (4) as a supervisor or manager, I am responsible for preventing all forms of harassment including sexual harassment in the workplace and for taking prompt effective action if I know or have reason to know of harassment in the workplace.

(Print)

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Subtle Sexual Harassment – UPDATE

The US Supreme Court has made several recent rulings regarding sexual harassment in the workplace. Here is a brief summary of those decisions:

- In a ruling in February 1998, the Court determined that same-sex harassment is illegal under federal law. That is, a woman who harasses another woman or a man who harasses another man is in violation of the law assuming that the other requirements of unlawful harassment are present.
- In June of 1998, the Court clarified that an employer may be liable for its supervisors' sexual harassment, even if it didn't know about the misconduct. In some cases, an employer can defend itself by saying it took reasonable steps to prevent harassment on the job. These steps would include: having a clear policy against harassment, ensuring that all employees are aware of the policy, enforcing the policy, and providing reasonable means by which an employee can inform the organization of an incident of harassment.
- The Court also determined that in some cases where an employer has taken reasonable care to prevent and promptly correct any sexually harassing behavior and where an employee fails to take advantage of the employer's well-publicized complaint procedures, the employer can present these facts as a defense and may avoid liability.
- In cases where a supervisor causes an employee to suffer a tangible adverse impact on his or her employment as a result of an incident of sexual harassment or as retaliation for reporting such an incident, the employer may still be found liable even if it has taken affirmative measures to end workplace harassment.

Sexual harassment is a complex legal area. The programs Quality Media Resources, Inc. (QMR.COM) produces are intended to assist organizations in making their employees aware of their responsibilities under the law. Our programs are not intended to replace or substitute for the advice of legal counsel nor are they intended to provide specific legal advice. If you have legal questions regarding the issue of harassment, please contact your organization's legal counsel.

SAMPLE HARASSMENT POLICY

Every employee at _____ has the right to work in an environment free from harassment. Harassment of any employee on the basis of his or her race, religion, color, national origin, age, sex, sexual orientation, marital status, or the presence of any physical, mental or sensory disability is a serious violation of _____ policy and will not be tolerated.

Harassment can take many forms and can include slurs, comments, jokes, innuendoes, unwelcome compliments, pictures, cartoons, pranks or other verbal or physical conduct which:

- (1) has the purpose or effect of creating an intimidating, hostile, or offensive working environment;
- (2) has the purpose or effect of unreasonably interfering with an individual's work performance; or
- (3) otherwise unreasonably affects an individual's employment opportunities.

SEXUAL HARASSMENT is a type of harassment and occurs when the verbal and physical conduct described above is sexual in nature or is gender-based, that is, directed at a person because of their gender. Sexual harassment exists in the workplace when: (1) submission to the conduct is either explicitly or implicitly a term or condition of employment; (2) submission to or rejection of the conduct is used as a basis for an employment decision affecting such individual; or (3) the conduct unreasonably interferes with the individual's job performance or creates a work environment that is intimidating, hostile or offensive.

Sexual harassment includes: unwelcome **verbal behavior** such as comments, suggestions, jokes or derogatory remarks based on sex; **physical behavior** such as pats, squeezes, repeatedly brushing against someone's body, or impeding or blocking normal work or movement; **visual harassment** such as posting of sexually suggestive or derogatory pictures, cartoons or drawings, even at one's work station; **unwanted sexual advances**, pressure for sexual favors and/or basing employment decisions (such as an employee's performance evaluations, work assignments, or advancement) upon the employee's acquiescence to sexually harassing behavior in the workplace.

If you feel you or other employees have been subjected to harassment of any kind, you are encouraged to immediately identify the offensive behavior to the harasser and request that it stop. If you are uncomfortable in addressing the matter directly with the harasser, or if you do so and the behavior does not stop, then discuss the matter immediately with the Human Resources Director, your supervisor, or any supervisor with whom you feel comfortable. Supervisors and managers who receive a harassment complaint are to contact the Human Resources Director.

All complaints will be investigated promptly, impartially and discreetly. Upon completion of the investigation, the appropriate parties will be notified of the findings. Any supervisor, agent, or other employee who has been found to have harassed an employee will be subject to appropriate corrective action, ranging from a disciplinary warning to termination. **No employee will suffer retaliation in any form for reporting instances of harassment.**

We trust that employees of _____ will act responsibly to maintain a pleasant working environment, free of discrimination and harassment, allowing each employee to perform to his or her maximum potential. _____ encourages any employee to bring questions he or she may have regarding this policy to _____.

Candy S. Marshall - Attorney and Human Resource Consultant

Candy S. Marshall has served as a legal advisor to employers for over 10 years. Ms. Marshall has focused her practice on helping clients implement and maintain proactive, problem-preventive employment practices and systems.

Ms. Marshall has conducted sexual harassment sensitivity training for management and employees in a cross-section of industries including retail, hospitality, construction, professional services, health care, financial services, governmental agencies and high technology.

Ms. Marshall has represented employers in sexual harassment litigation and administrative claims proceedings and has assisted her clients in investigating and resolving sexual and racial harassment and discrimination complaints. She has also helped her clients develop and implement procedures and processes for investigating harassment complaints in a fair and confidential manner.

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For the past 12 years, Jan Salisbury M.S. has been an organizational consultant specializing in team building, conflict resolution, "coaching" managers about work group effectiveness and training managers, human resource departments and EEO staff about resolving sexual harassment and other gender-based complaints, including healing the aftermath in work groups.

Ms. Salisbury is also a certified Mental Health and Marriage and Family Therapist who has specialized in couples and individuals including counseling over 200 women who have been sexually harassed and individually "training" a dozen harassers.

Published in several professional journals, Jan Salisbury has consulted in over forty five court cases and testified 15 times in federal and state courts. In March of 1992 she was the conference Chair of SEX AND POWER ISSUES IN THE WORKPLACE, the first interdisciplinary national conference devoted to promoting women and men working productively together and resolving sexual harassment. An invited/chosen presenter at the American Bar Association as well as other professional associations, she includes the Washington State House of Representatives, Burlington Northern Railroad, The US Department of Agriculture and Bonneville Power Administration among her hundreds of organizational clients.

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Mary L. Sebek is a lawyer who provides consulting and training services in prevention of sexual and racial harassment, disability accommodation, employment discrimination law, cultural diversity and communications. Her clients include federal, state and local government agencies, Fortune 500 companies, professional associations and labor unions.

Ms. Sebek previously has worked as an Administrative Judge for the US Equal Employment Opportunity Commission and the US Merit Systems Protection Board, as a Division Chief for the US Court of Appeals for the Ninth Circuit, as an Adjunct Professor of Law for the IIT-Chicago Kent College of Law and as a Trial Attorney both in private practice and for the US Department of Justice.