

# Unlawful Workplace Harassment

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Working to create economic growth, good jobs and strong communities across New York State.

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# It's Against The Law!

- Harassment is a form of Discrimination
- Title VII of the Civil Rights Act of 1964
- New York State Law
  - Age, race, creed, color, national origin, sexual orientation, military status, sex, disability, genetic predisposition or carrier status, marital status, arrest record or status as a victim of domestic violence, familial status
  - 70% on a basis other than sex.



# It's Against The Law!

- Important Court Decisions
  - Meritor Savings Bank v. Vinson (1986)
    - Quid Pro Quo
    - Hostile Work Environment
  - Burlington Industries v. Ellerth (1998)
    - Affirmative Defense
- Definition of Workplace Harassment Today



## Who's Covered?

- **Those who harass**– employees at all levels, customers, members of the same sex
- **Those who are targeted** – victims, bystanders and, in some cases, witnesses who are affected by the harassment.
- What exactly is sexual harassment?

# It's Wrong!

- Impact On Victims

- Psychological Consequences – *Depression, anxiety, guilt, fear, substance abuse, etc.*
- Physical Consequences – *Sleep disturbance, fatigue, headaches, weight loss/gain, etc.*
- Work Related Consequences – *Decreased job performance, decreased satisfaction, increased absenteeism, etc.*
- Reluctance To Complain – *only 8-15% complain*



# The Risk

- More than one upstate employer sued every day
- 40.6% of all US settlements are in NYS
- Average Award: \$400,000 (+\$100,000 Attorney's fees)
- Civil Rights Act of 1991
- High Profile Sexual Harassment Cases
  - Clarence Thomas – Anita Hill (1991)
  - Jones v. Clinton (1998)
  - Harvey Weinstein, etc.
- Harassment Complaints
  - Highest Number in 7 years
  - Sex based harassment down 1% - 6<sup>th</sup> consecutive decrease
- Personal Liability



# The Risk

- Charges alleging harassment on the basis “other than sex” have dramatically increased.
- Discrimination Trends (EEOC-2016)

Retaliation: 45.9%	National Origin: 10.8%
Race: 35.3%	Religion: 4.2%
Disability: 30.7%	Color: 3.4%
Sex: 29.4%	Equal Pay Act: 1.2%
Age: 22.8%	GINA: 0.3%

- Gender Identity
- Personal Liability





# Preventative and Remedial Actions *(The Affirmative Defense)*

- Anti-Harassment Policy
  - *Statement of Prohibition*
  - *Define inappropriate behaviors*
  - *Procedural details – multiple avenues of complaint*
  - *Require employee's to report harassment*
  - *Describe how you will respond*
  - *Prohibit retaliation*
- Communicate the Policy
- Staff Training



# Handling A Complaint Of Sexual Harassment

- “Prompt, Thorough Investigation”
  - *Timeliness*
  - *Objective*
  - *Thoroughness*
  - *Confidentiality*
  - *Corrective Action – consistent/proportionate*
- Evaluating Evidence Of Harassment – *The Reasonable Person Standard*
- Helping The Victim Cope
- Preventing Retaliation



# Common Management Mistakes

- Not taking action unless corroboration provided (make a decision even where evidence is conflicting-go with your gut)
- Moving the complaining employee (unless at employee's request)
- Inadequate investigations
- Inconsistent discipline for inappropriate conduct
- Failure to respond appropriately when harasser is an important asset to company
- Inadequate documentation
- Failure to follow-up with the victim



# Next Webinar

## ***Paid Family Leave Update***

How's it going? We'll talk about challenges that have surfaced since the implementation of PFL and how employers and regulators are reacting to those challenges.

Thursday, February 22, 2018

11:00 am – 12:00 pm

*HRCI certification is pending*

**Register at [www.bcnys.org](http://www.bcnys.org)**



# Spring 2018 Webinars

- February 22 – PFL Implementation Update
- March 15 - ADA/FMLA/Worker's Compensation Compliance
- April 19 - Employee Work Schedules, Break and Meal Period Compliance/NYS Budget Update
- May 17 - End of Session Preview/Paid Family Leave Update
- June 26 - Legislative Update/End of Session Review

**Register at [www.bcnys.org](http://www.bcnys.org)**



# PFL Updates

- March 22
- April 26
- May 24
- June 14

Thursdays @ 11:00 am

**Register at [www.bcnys.org](http://www.bcnys.org)**



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