

# SCCE NY Regional Forum

## Sexual Harassment, Bullying and Retaliation

Presented by  
Gilen Chan, Debra Sabatini Hennelly, and Carrie Penman

### Presenters



**Gilen Chan**  
Special Counsel  
New York City College of  
Technology/CUNY



**Debra Sabatini Hennelly**  
Founder and Principal  
Compliance & Ethics Solutions



**Carrie Penman**  
Chief Compliance Officer and  
SVP, NAVEX Global



Compliance & Ethics Solutions

## Agenda

### **Sexual Harassment, Bullying and Retaliation**

#### **Part 1**

- Current State of Workplace Issues
- Regulatory Landscape
- Group Exercise Part 1

#### **Part 2**

- Group Exercise Part 2
- Assessing Potential Risks in your Organization
- Proactive Steps to Drive Change
- Summary and Key Takeaways

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## Types of Disrespectful Behavior Included in the Discussion

- Harassment
- Sexual Harassment
- Hostile Work Environment
- Bullying
- Retaliation



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## Current State of Workplace Issues

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## Sexual Harassment: It's Not Going Away

- Even with greater focus and training, sexual harassment incidents have NOT disappeared
- Recent news has revealed the ubiquity of sexual harassment today
- Technology/social media have given a voice to victims
- Increasing zero-tolerance policies, awareness and training are important but not enough
- Every organization should be evaluating their history, their approach and their culture



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## The #MeToo and #TimesUp Movements are Just Getting Started

- Eggshell environments for all genders
- How people welcome physical touch varies
  - How do we know what is and isn't welcome?
- Personal space is defined differently for each person
  - How do we know?



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## The Numbers

Sexual harassment has been and remains a global epidemic

- **25-85%** of U.S. women reported having experienced sexual harassment in the workplace. Men report at a rate of **17%**. – EEOC 2016
- **30-99%** of women globally reported experiencing sexual harassment or sexual violence, in and out of the workplace
- **43%** of women who reported sexual harassment were harassed by a supervisor
- **60-94%** of victims took no action
- **75%** of victims report experiencing retaliation for reporting
- In a recent Pew Research Center survey, 7% of the men polled said they had experienced it, compared to 22% of the women.

<http://www.cnn.com/2017/11/25/health/sexual-harassment-violence-abuse-global-levels/index.html>

<https://fairygodboss.com/articles/sexual-harassment-statistics>

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## Do We “Know it When We See It?”

- **16%** of women don’t realize they had been harassed:
  - Saying “no” when asked if they had been sexually harassed
  - But “yes” to experiencing sexist or sexually explicit remarks\*
- **34%** of employees surveyed are unable to identify behaviors that create a hostile environment\*\*

Reference: <https://fairygodboss.com/articles/sexual-harassment-statistics>

\*\*Reference: TrueOfficeLearning.com



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## It Isn’t Just About Men Harassing Women

**November 2017**

**Man Sues Apple, Claims Discrimination and Sexual Harassment**

**December 2017**

**Female Kansas congressional candidate drops out over sexual harassment claim by male subordinate**

**March 2018**

***Nashville Mayor Megan Barry Pleads Guilty to Theft and Agrees to Resign After Two Year Affair with Head of Her Security Detail***

**January 2018**

**Mika Brzezinski Questions #MeToo Movement: ‘Men Are Not the Only Aggressors’**

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## The Big Picture

- Can be any gender sexually harassing any other at work
- The number of sexual harassment complaints filed by men has more than tripled in recent years – EEOC
- Different generations and cultures define sexual harassment differently
- However, worldwide it is predominantly men who harass women in the workplace



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## More Employers Than Ever Have Sexual Harassment Policies and Training

But it is not enough...

- Policies and training are important, but can't address complexities or change culture and one size doesn't fit all
- The global **workforce** is multi-generational, multi-cultural and most are tech-savvy
- In the current climate, many employers **delegate** addressing sexual harassment to their policies and training
- Yet we know that organizational **culture wins** over rules
- Addressing sexual harassment is **not only a matter for HR or Compliance**
- Organizational leaders **create the example** that employees follow – either good or bad



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## Higher Ed - Ignoring the Little People & Paying the Price

High Profile Performers = Status = Large Endowments

**Larry Nassar, Michigan State University, former USA**

**Gymnastics physician**

- Over 265 students/athletes
- Nassar pleads guilty to child pornography & sexual assault – sentenced to prison (going away forever)
- University accused of enabling Nassar's abuse
- MSU President and athletic director resigned
- Board members asked to resign

**Jerry Sandusky, Penn State University, former assistant football coach**

- Convicted of 45 counts of child sexual abuse; serving 30-60 years
- University ignored taking steps to protect students
- Former athletic director and former vice president plead guilty to child endangerment
- Former president resigned; sentenced to jail time

**Jorge Dominguez, Harvard University, professor**

- University apprised of allegations in the 80's
- Allegations continued to rise over the years
- Chronicle of Higher Ed published story Feb 2018
- Harvard finally reacted and placed him on administrative leave
- Total of 18 faculty and students have come forward
- Dominguez announced resignation this week
- OCR adds Harvard to investigation list

***RESULT: Serious reputational damage that will be long lasting***

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## The Consequences of Harassment

- Emotional, economic and physical harm to victims
- Hostile work environment for those not directly involved
- Decreased productivity
- Increased loss of great talent
- Inability to attract new talent
- In some cases, it may violate civil or criminal laws
- High cost of legal and recovery fees
- Reputational harm to organization
- Hurts bottom line

Adapted from: StopVAW.org

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## Speaking Up: Why Don't They?

- Credibility issues
- Fear of retaliation
- Reporter will be blamed
- No one will do anything
- Don't want to hurt harasser



Adapted from: <http://www.onpoint-leadership.com/2015/02/build-leverage-better-relationships-work/>

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## Retaliation/Adverse Actions Defined

Retaliation includes *any behavior that would discourage an employee from raising a concern about discrimination or other misconduct.*

Termination,  
suspension,  
demotion,  
reduction of pay

Significant  
schedule  
changes or  
reassignment of  
duties

Failure to  
enforce safety  
and other rules

Exclusion from  
training  
opportunities or  
significant  
projects

Being ostracized  
from a group or  
excluded from  
meetings

Damage to  
personal  
property

Any such actions  
against a person  
*closely affiliated*  
with the target  
employee

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## A Look at Bystanders

**Bystander:** Someone who is present at an incident but isn't directly involved.

### Why don't people help more often?

- It's not always easy to step in, even if you know it's the right thing to do. Some common reasons bystanders remain on the sidelines include:
  - "I don't know what to do or what to say"
  - "I don't want to cause a scene"
  - "It's not my business"
  - "I don't want my friend to be mad at me"
  - "I'm sure someone else will step in"
- In many situations, bystanders have the opportunity to prevent crimes like sexual assault from happening in the first place
- Universities across the US are training on bystander intervention

Reference: [online.rainn.org](http://online.rainn.org) y [rainn.org/es](http://rainn.org/es)

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## Bystander Intervention

Studies say less than 20% will take action



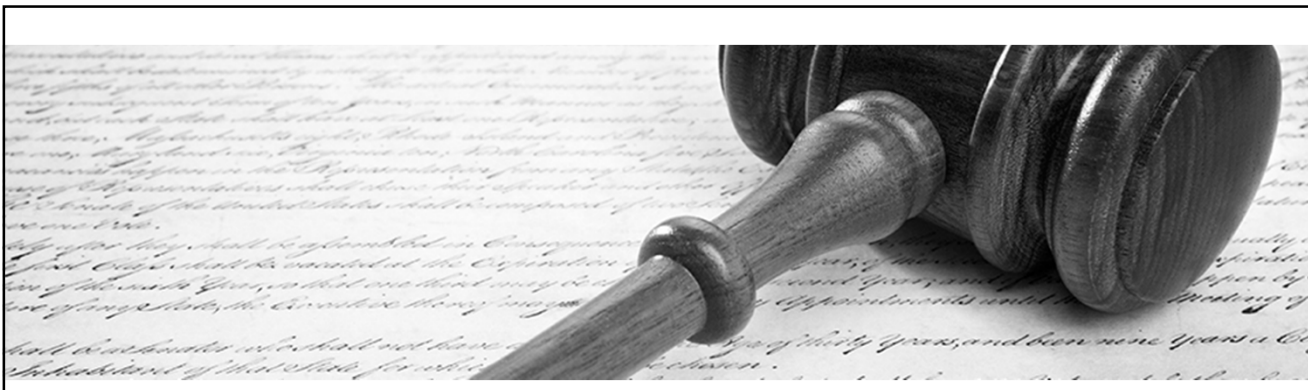
### How They Can Intervene

- Disrupt the situation
- Confront the harasser, now or later
  - Talk openly about behavior and ask others for their opinions before confronting
- Ask if the victim is OK
  - Offer help, such as going with victim to HR or other resource
  - Management level bystanders must take appropriate action

Source: [https://www.nytimes.com/2017/12/12/us/the-metoo-moment-how-to-be-a-good-bystander.html?emc=edit\\_gn\\_20180131&nl=&nid=83725258&te=1](https://www.nytimes.com/2017/12/12/us/the-metoo-moment-how-to-be-a-good-bystander.html?emc=edit_gn_20180131&nl=&nid=83725258&te=1)

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## Legal and Regulatory Landscape

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## Federal Laws

### Enforced by the US Equal Opportunity Commission (“EEOC”)

- **Title VII of the Civil Rights Act of 1964 (“Title VII”)**
  - Illegal to discriminate against someone on the basis of race, color, religion, national origin or sex
  - The Pregnancy Discrimination Act (1978) amended Title VII to include pregnancy, childbirth or related medical conditions
  - Illegal to retaliate against a person because they complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.
  - Also applies to private and public colleges and universities, employment agencies and labor organizations
- **Equal Pay Act of 1963 (“EPA”)**
  - Illegal to pay different wages to men and women if they perform equal work in the same workplace
  - Protection from retaliation, as above
- **The Age Discrimination in Employment Act of 1967 (“ADEA”)**
  - Protects people who are 40 or older from discrimination because of age.
  - Protection from retaliation, as above
- **Title I of the Americans with Disabilities Act of 1990 (“ADA”)**
  - Illegal to discriminate against a qualified person with a disability in the private sector and in state and local governments.
  - Protection from retaliation, as above
  - Employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless doing so would impose an undue hardship on the employer’s operations
- **The Genetic Information Nondiscrimination Act of 2008 (“GINA”)**
  - Illegal to discriminate against employees or applicants because of genetic information
  - Protection from retaliation, as above

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## EEOC Definition of Harassment

- A form of **employment discrimination** that violates:
  - Title VII of the Civil Rights Act of 1964;
  - The Age Discrimination in Employment Act of 1967; or
  - The Americans with Disabilities Act of 1990.
- **Unwelcome conduct** that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information
- **Harassment becomes unlawful** where:
  - Enduring the offensive conduct becomes a condition of continued employment; or
  - The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile or abusive
  - Anti-discrimination laws prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.
- **Offensive conduct** may include, but is not limited to:
  - offensive jokes, slurs, epithets, name calling, mockery, insults or put-downs;
  - intimidation, physical assaults or threats;
  - offensive objects or pictures; and
  - interference with work performance
- Harassment can occur in a **variety of circumstances**, including, but not limited to:
  - Harasser can be the victim's supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee
  - Victim does not have to be the person harassed, but can be anyone affected by the offensive conduct
  - Unlawful harassment may occur without economic injury to, or discharge of, the victim

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## Key US Supreme Court Sexual Harassment Cases\*

- ***Meritor Savings Bank v. Vinson***, 477 US 57 (1986):  
"Sexual harassment" constitutes a "hostile work environment" amounting to gender discrimination under Title VII
- ***Harris v. Forklift Systems***, 510 US 17 (1993):  
Focus is on whether an "abusive work environment" was created, not whether "concrete psychological harm" resulted
- ***Oncale v. Sundowner***, 523 US 75 (1998):  
Whether or not motivated by sexual desire, harassment is unlawful if it places its victim in an objectively disadvantageous working condition, regardless of the victim's gender
- ***Pennsylvania State Police v. Suders***, 542 US 129 (2004):  
Employee faced with a situation in which a "reasonable person... would have felt compelled to resign" could bring suit, even if she had not filed a report with the employer before resigning, subject to defenses  
***Burlington Industries v. Ellerth***, 524 US 742 (2009):  
Carved out defenses for employers who implement viable anti-harassment policies supported by employee reporting mechanisms and serious actions to correct the situations
- ***Faragher v. City of Boca Raton***, 524 US 775 (2009):  
Employer is vicariously liable under Title VII for actionable discrimination caused by a supervisor, subject to an affirmative defenses (reasonableness of the employer's conduct as well as that of the plaintiff victim)

\*See [www.oyez.org](http://www.oyez.org) for more details, opinions and audio recordings of proceedings

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## Harassment and Incivility in the Workplace

- Over the past 5 years, **70%** of ethics and compliance hotline calls are related to HR issues, including **harassment, diversity and workplace respect – NAVEX benchmark data**
- EEOC 2017: 84,254 Workplace Discrimination Charges
  - Retaliation was the most frequently filed charge 41,097 cases (49%), followed by race (34%) and disability (32%)
  - Sex discrimination charges totaled 25,605 cases
    - **6,696 (26%) of which were sexual harassment cases with 16.5% filed by males**
    - EEOC obtained \$46.3 million in monetary benefits for victims of sexual harassment



<https://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm> and [https://www.eeoc.gov/eeoc/statistics/enforcement/sexual\\_harassment\\_new.cfm](https://www.eeoc.gov/eeoc/statistics/enforcement/sexual_harassment_new.cfm)

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## TITLE IX: Department of Education's Office of Civil Rights (OCR)

- 1972: Congress passed the **Educational Amendments**. Title IX is one section of this law. It prohibits discrimination against women and girls in federally funded education, including in athletic programs. Title IX made a profound difference in sports, but it has escalated in sexual harassment cases.
- 2011: US Department of Education's Office of Civil Rights ("OCR") issued a Dear Colleague Letter, titled **Guidance on Addressing Sexual Harassment/Sexual Violence** which states in part, **"The sexual harassment of students, including sexual violence, interferes with students' right to receive an education free from discrimination and, in the case of sexual violence, is a crime."**
  - Letter gives specific examples of schools' responsibilities relating to sexual harassment and violence, discusses proactive efforts schools can take to prevent sexual violence and educate employees and students, and provides examples of the types of remedies schools and the OCR may use to respond to sexual violence.
  - Colleges' obligation: **"to take immediate and effective steps to end sexual harassment and sexual violence."**
  - Institutions that fail to fulfill Title IX responsibilities could face fines and potentially be denied further access to federal funds, as imposed by the Department of Ed.

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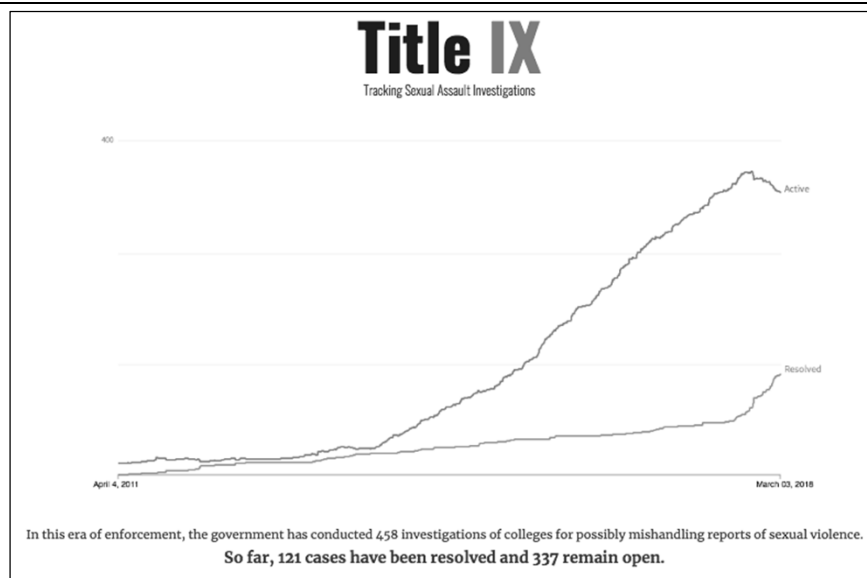
## Beginnings of Title IX and OCR Stepping In

- **2011 Yale undergraduate student** and alleged sexual violence survivor Alexander Brodsky filed a Title IX complaint with 15 fellow students alleging Yale "has a sexually hostile environment and has failed to adequately respond to sexual harassment concerns."
- **2012, Amherst College student**, Angie Epifano wrote an explicit, personal account of her alleged sexual assault and the ensuing, "appalling treatment" she received when coming forward to seek support from the College's administration. Epifano alleged that she was raped by a fellow student and described how her life was affected by the experience; she stated that the perpetrator harassed her at the only dining hall, that her academics were negatively affected, and that, when she sought support, the administration coerced her into taking the blame for her experience, and ultimately institutionalized her and pressured her to drop out.
- When the Amherst case reached national attention, Clark and Pino, the two women who were allegedly sexually assaulted at the **University of North Carolina at Chapel Hill** connected with Amherst student, Dana Bolger and Brodsky to address the parallel concerns of hostility at their institution, filing Title IX and Clery Act complaints against the university, both leading to investigations by the OCR.
- Following the national prominence of the UNC Chapel Hill case, organizers Pino and Clark went on to coordinate with students at other schools.
- **2013, complaints** of Title IX were filed by **Occidental College, Swarthmore College and the University of Southern California**. These complaints, the resulting campaigns against sexual violence on college campuses, and the organizing of Bolger, Brodsky, Clark, Pino and other activists led to the formation of an informal national network of activists.

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## Enforcement

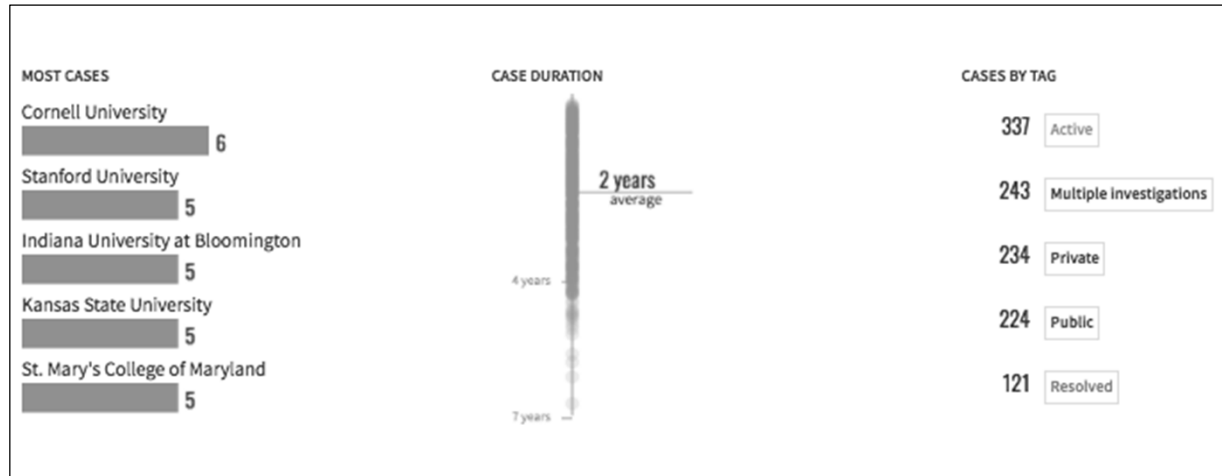


Title IX Sexual Assault Investigation Tracker by The Chronicle of Higher Education

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## Overview of OCR Cases



Title IX Sexual Assault Investigation Tracker by Chronicle of Higher Education

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## Laws – Sexual Assault and Harassment

- **Federal Laws**

- **Title IX of Educational Amendments of 1972**
  - Prohibits discrimination on the basis of sex in federally funded programs
- **The Clery Act**
  - Requires universities to report crimes that occur on campus and school safety policies.
- **Violence Against Women Act ("VAWA")**
  - Addresses domestic violence, sexual assault, stalking

- **Campus Sexual Violence Elimination ("SaVE") Act**

Broadened Clery Act to address all incidents of sexual violence and stalking

- **New York State Law**

- **Enough is Enough ("EIE")**
  - NYS colleges required to adopt comprehensive procedures and guidelines, including a uniform definition of affirmative consent, a statewide amnesty policy and expanded access to law enforcement.

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## Helpful Guidance from the EEOC Website

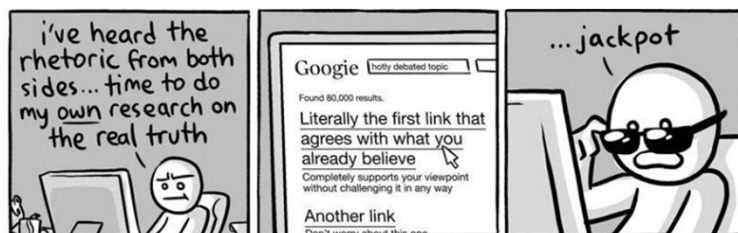
- Prevention is the best tool to eliminate harassment in the workplace.
- Employers are encouraged to take appropriate steps to prevent and correct unlawful harassment.
- They should clearly communicate to employees that unwelcome harassing conduct will not be tolerated.
- They can do this by establishing an effective complaint or grievance process, providing anti-harassment training to their managers and employees, and taking immediate and appropriate action when an employee complains.
- Employers should strive to create an environment in which employees feel free to raise concerns and are confident that those concerns will be addressed.
- Employees are encouraged to inform the harasser directly that the conduct is unwelcome and must stop.
- Employees should also report harassment to management at an early stage to prevent its escalation.

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## Our Personal Biases

- **Bias:**
  - An attitude, belief, or feeling that results in (and seemingly helps justify) unfair treatment of a person because of his or her identity, beliefs, lifestyle, etc.
- **Unconscious biases:\***
  - Social stereotypes about certain groups of people that individuals form outside their own **conscious** awareness
  - **Unconscious bias** is far more prevalent than **conscious** prejudice and often incompatible with one's **conscious** values
  - Certain scenarios can activate
  - **unconscious** attitudes and beliefs.



Reference: [www.diversity.ucsf.edu](http://www.diversity.ucsf.edu)

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## Identifying Stereotypes and Unconscious Bias

*What characteristics may cause unconscious bias toward a colleague?*

- Gender
- Race
- Age
- Ethnicity
- Religion
- Sexual orientation
- Body type
- Dress
- Income
- Career/job
- Country of origin
- State of origin
- City of origin
- Neighborhood
- Renter or owner
- Children or no children
- Pregnant
- Disability
- Education level
- School or college attended
- Married or single
- Introverted or extroverted
- Language
- Vocabulary
- Complexion
- Hair color
- Clothing
- Accessories
- Body art
- Emotion at work
- Political party
- Diet
- Club memberships
- Favorite sports
- Favorite teams
- Body odors



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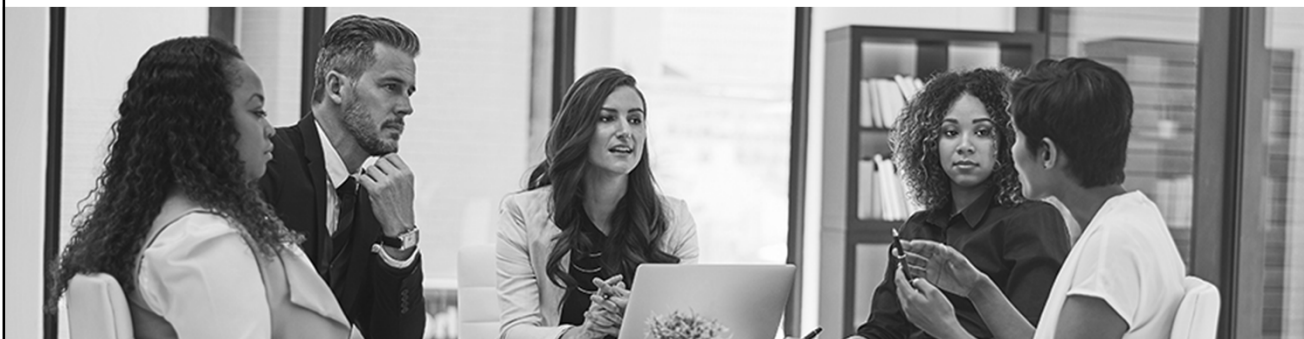
## Example from Training: Real Bias Issues Raised

- Appearance
- Age (above and below 40)
- Parental leave
- Pregnancy
- Gender and racial bias
- Working parents (men and women)
- Collegiate background
- Emotion at work
- Religion
- Lifestyle choices



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## Group Exercise Part 1

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## The Complex Workplace

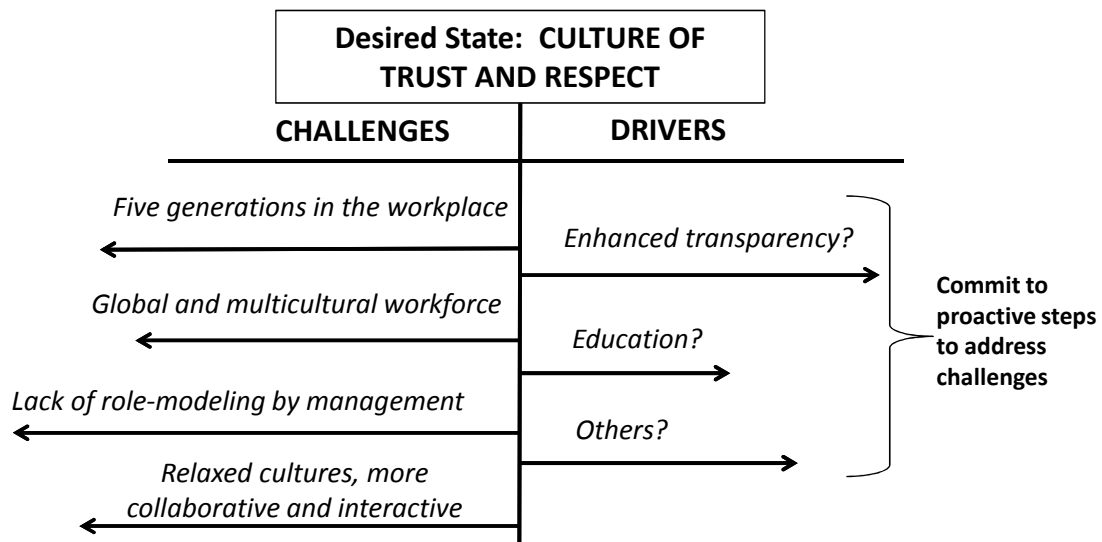
- Differing understandings of what is acceptable
  - Five generations in the workplace
  - Global and multicultural workforce
- Instant access to non-traditional media outlets like social media, blogs
- Lack of role-modeling by management
- Relaxed cultures, more collaborative and interactive
- More anonymity in raising issues or making allegations



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## Challenges to Creating the Desired Culture



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## Group Activity: Proactive Steps to Address the Challenges

### Driving Change and Creating a Culture of Trust and Respect

- For each of these “Challenges,” please use a colored stickie to jot down one thing that you think can be done in your organization to address each Challenge (or something you’re already doing)
  - Five generations in the workplace*
  - Global and multicultural workforce*
  - Poor behavioral example of management*
  - Relaxed cultures, more collaborative and interactive*
- We are color-coding these ideas, in order to discuss and share them later (see key →)

FIVE GENERATIONS

GLOBAL/MULTI-CULTURAL

LACK OF ROLE-MODELING

RELAXED CULTURES

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**BREAK**

**NEXT  
BIG THING  
AHEAD**

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## Group Exercise Part 2

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## Group Activity Debrief

### Your Ideas for Creating a Culture of Trust and Respect in a Complex Workplace

- We will read a sampling of your ideas for Proactive Steps to address each of these Challenges
  - *Five generations in the workplace*
  - *Global and multicultural workforce*
  - *Lack of role-modeling by management*
  - *Relaxed cultures, more collaborative and interactive*

FIVE  
GENERATIONS

GLOBAL/MULTI-  
CULTURAL

LACK OF  
ROLE-  
MODELING

RELAXED  
CULTURES



## Developing Effective Processes to Identify and Manage Risks



## Obstacles to Our Effectiveness

- Lack of leadership and accountability
- Failure to escalate issues
  - plausible deniability
  - Keep dirty laundry inside the team
- Not properly assessing the risks
- Challenges are everywhere and there will never be consensus on where the line is
- How much does your relationship with HR impact your effectiveness on this topic?



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## Profile of Harassers and Abusers of Power

Why policies are not enough and ethical leaders are needed

- **Protection of occupational territory**
  - Sexual harassment is seen as self-protection and recapturing control through embarrassment and humiliation of victim – often done in groups
- **Cultural approval of sexual objectification**
  - Organizational or occupational culture that reduces women to fantasy sex objects without human sexual boundaries making it okay to harass
- **Entitlement and power of position**
  - Based on traditional gender roles
  - Using power to mistreat others; gets away with it due to past acceptance or non-reporting
  - Not recognizing emotions in others; ego eats empathy

Adapted from: StopVAW.org

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## Other Types of Harassers

- **Attention-seeking**
  - Tries to be funny or gallant – inappropriate compliments and personal comments, off-color jokes, suggestive body language
- **Deviant**
  - Builds upstanding image, but has compulsive sexually-based behavior directed at victim privately
    - he said / she said situations
- **Situational**
  - Emotional or medical issue causes inappropriate behavior – addressing personal problem stops behavior
- **Clueless**
  - Typically respectful men, unaware that their behavior is unwelcome or over the line (e.g., asking the only female meeting participant to get everyone coffee)

Adapted from: Sexual Harassment: Causes, Consequences And Cures, Truida Prekel, SynNovation, Cape Town, SA, 2001

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## Cognitive Biases in Decision-Making: “Ethical Breakdowns”\*

*“Even the best-intentioned executives may be unaware of their own or their employees’ unethical behavior...”*

How cognitive biases create obstacles to ethical decisions and behavior:

- **“Ill-conceived goals”** may actually encourage negative behavior
- **“Motivated blindness”** makes us overlook unethical behavior when remaining ignorant would benefit us
- **“Indirect blindness”** softens our assessment of unethical behavior when it’s carried out by third parties
- The **“slippery slope”** mutes our awareness when unethical behavior develops gradually
- **“Overvaluing outcomes”** may lead us to give a pass to unethical behavior

\*Reference: “Ethical Breakdowns,” by Max H. Bazerman and Ann E. Tenbrunsel, Harvard Business Review, April 2011.

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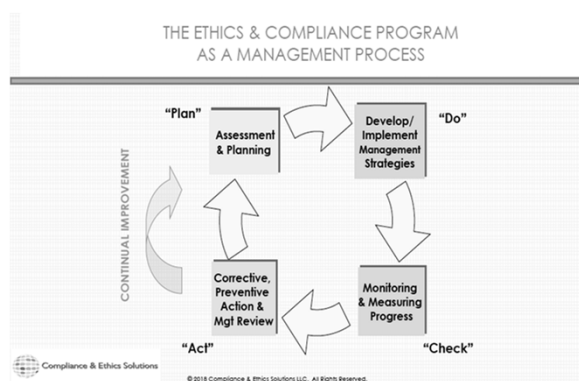
## Proactive Steps to Drive Change

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## Driving Continual Improvement: Proactive Steps

- **Plan:** The “Current State” and Needed Improvements
  - Risk Assessment and Prioritization
  - Action Plan and Commitment Toward “Desired State”
- **Do:** Implement the Plan
  - Leadership Team Education and Self-Reflection
  - Communicate the Commitments and the Plan
  - Other Mitigation Activities (include focus on retaliation)
- **Check:** Measure Plan Effectiveness
  - Fair and Objective Investigations
  - Audit and Monitor
- **Act:** Response to Issues and Findings
  - Leadership Team Review and Commitment to Next Steps
- **Reassess:** Did We Improve?



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## Key Processes – Collaborating with HR

- Implement good **hiring practices** and background checks
- Strong **investigation skills** and procedures
- **Tracking patterns** of inappropriate behavior
- Planning **disciplinary actions** for harassers
  - Consistency
  - not always career-ending
- Determine what to **communicate to surrounding team** members post-issue



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## Let's Talk About Workplace Relationships

- The lines between the office and social settings have been blurred by some employers to increase productivity and employee morale:
  - Serving breakfasts, lunches, happy hours, fitness classes
  - Encouraging a more casual work environment
- Many couples meet at work and have long happy relationships...the ones that don't can create risk
- Do you have a dating policy?
- Do you require “love contracts” when two employees are in a relationship?
  - Different for manager/subordinate versus two peers?



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## “Special Rules for Special People”

- What happens to “Great Performers” Who Violate the Code of Conduct in Your Organization?

- Promoted
- Tolerated
- Coached
- Penalized
- Fired



What behaviors cross the line? Disrespect? Bullying? Intimidation? Hostile work environment? Harassment? Dating a subordinate?

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## Roles and Responsibilities of Leadership and the Board

“You Can’t Delegate Ethics”

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## It Starts with the Board

### Ask the Right Questions, then Take the Right Action

- Are the anti-harassment policies and training efforts check-the-box or effective?
- Is the internal reporting process clear with designated, trained resources to hear victim complaints?
- Does the organization tolerate any form of harassment or disrespect?
- Are all reports properly investigated by trained investigators?
- Are there written criteria for reporting harassment allegations to the Board?
- Are there written criteria for reporting retaliation allegations to the Board?
- Does the Board receive information about outcomes of harassment allegations, and subsequent retaliation claims, gathered from all relevant functions?
- Are board members taking the right action when they become aware of a sexual harassment situation?

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## Special Duties of Leaders

- Be a consistent example of respectful conduct
- Stop disrespectful horseplay before it escalates to harassment
- Take all complaints of harassment seriously; take appropriate action
- Hold yourself and everyone else equally accountable
- Actively support training and awareness efforts to stop sexual harassment

**“Leadership is not about being in charge. Leadership is about taking care of those in your charge.”**

*- Simon Sinek, British-American author, motivational speaker*

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## Prevention: Create a Culture of Trust and Respect

- Clear statement of intent to stop sexual harassment from top leadership
- Written anti-harassment policies and awareness training
- Process and resources employees can use to report issues of sexual harassment
- Prompt and effective response by employer to complaints
- Encouragement of those who can intervene to do so
- Ongoing communications and guidelines - especially face to face communications from leadership to remove taboo against raising these issues and intervening and use of sanitized, real cases
- Act like you mean it – hold everyone equally accountable

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## Proactive Approaches: Examples

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## Discussion Points

- **Why**

- This conversation matters more than ever

- **About**

- How you and many men *and* women may be feeling about and responding to the #MeToo movement
- Our personal biases
- Feedback we've heard

- **How**

- What we can (and must) do
- **Fist or five**



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# fierce.

conversations

## Why This Conversation Matters

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## Financial Impact to One High-Profile Company

- Company valuation dropped almost 30%
- Market share dropped from near 90% to 75% in the aftermath of its various scandals
- Great talent left the company
- More legal headaches continue to accrue

Your Company Here



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## Stop & Think

- Improve self-awareness and empathy
- Careful of office romances – could go sour and lead to harassment allegations
- Sexy clothing and flirting does not mean a woman wants to be harassed
- No personal or sexual request should ever be “quid pro quo”
- Previously acceptable behavior may be reclassified as unacceptable by the target
- Consider – What if she was your daughter, spouse, mother?
- “No” always means **NO**
- **If you’re not sure it’s OK, you shouldn’t do it**

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## What We Can Do

Don't make comments that are ....

- **Sexually explicit**, or
- **Derogatory** of someone's gender, race, religion, or other Prohibited ground
- **Disparaging**, ridiculing, insulting

When at work, err on the side of caution

- Remember the **unintended affects** your behavior could have on others

*Remember what is said is not what may be heard or received as intended.*

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## Keep in Mind

You **cannot always tell** from someone's outward response whether or not they welcomed your comment

Just because **someone does not object** does not mean that your comment or joke was appropriate

Your **intention** doesn't matter—what matters is the effect your conduct has

You **don't have to be talking to the person who is offended** for your comment to be problematic

Even if some people find your comment **acceptable or funny**, it does not mean that it is appropriate

A person **doesn't have to share the protected characteristic** in order to be offended

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## Keep in Mind

We must promptly respond to all allegations of potential harassment or discrimination that we learn of.

We “learn” of harassment *whenever you, or any supervisor or manager learns of it.*

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## Keep in Mind

Accordingly, supervisors must report all harassing behaviors to HR, *even if:*

The supervisor *is the one being accused* of harassment

The victim doesn't file a complaint or asks you to keep the matter confidential

The complaint is not in writing

The conduct would not necessarily meet the legal threshold for unlawful harassment



You do not supervise any of the employees involved

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# So What Can We Do?

Before you assume,  
*learn the facts.*  
Before you judge,  
*understand why.*  
Before you hurt someone,  
*feel.*  
Before you speak,  
*think.*

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## Fist or Five

- Serving as the leader of creating cultures free from harassment, including at NAVEX Global
- Being mindful of our own biases
- Reporting situations that we become aware of
- Being cognizant that what works inside this room may not work outside this room
- Remembering we always represent NAVEX Global 24x7 and our behavior matters



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## Higher Ed – Successful Approaches

- **Capture ongoing risks** – *every novel incident added to risk matrix*
- **Risk Matrix** = Training Materials (Cases are carefully sanitized)
- **Address Retaliation** – main fear
  - Provide examples of what’s happened to those who have retaliated
  - Advertising/publishing examples extremely helpful
  - Word spreads like wildfire

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## Higher Ed – Successful Approaches (Continued)

- **Educate**
  - Who receives training annually and semi-annually
    - Cabinet - Leadership
    - Department Chairs - One pager of Dos and Don’ts over 2 hours
  - **Main Topics of Interest**
    - Title IX – Students and Staff (All Online)
    - Annual mandatory online Anti-Workplace Violence Training
    - Ongoing ethics training to policymakers and faculty above a certain threshold
      - (Joint Commission on Public Ethics “JCOPE” requires live delivery)
    - Changes in the law and areas to be repeated



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## Some Hard Questions and Issues

- **I will never be alone with a female coworker again. Isn't that the best thing to do?**
  - This may cause other problems, like potential discrimination allegations because females may not have access to company leaders and influencers and get opportunities in the same way as male colleagues
- **I thought she liked it. Didn't she?**
  - Consent is the issue. It can be verbal or non-verbal, but if there is any question at all, ASK. In one Canadian survey 1 of 3 Canadians did not understand the concept of consent. And perception of the "reasonable person" is the key, not intent



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## "Tea Consent"

Very successful training in higher education and applicable to all industries

<https://www.youtube.com/watch?v=u7Nii5w2Fal>



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## Summary & Takeaways

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## What does success look like?

- Ongoing dialogue and communications
- Ensured people complete harassment training
- Deliberate focus on managers and supervisors
  - Recognition and prevention of harassment
  - Preventing retaliation
- Handling of involuntary separations without claims
- Resolve helpline cases without recourse



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## Key Takeaways: Stopping Workplace Sexual Harassment

### Prevent, Recognize, Act

- Create/update your sexual harassment **policies**
- Good **hiring practices** and background checks
- **Educate** the workforce through training and ongoing awareness
  - What sexual harassment is
  - Red flags for sexual harassment
  - Bystander intervention
  - Range of discipline for harassers (e.g., not always career-ending)
  - Organizational actions taken against harassment and retaliation
- **You cannot delegate ethics**
  - Ask leadership to make a **visible commitment** to stop sexual harassment – and walk the talk
  - Create a **civil culture** where victims are credible/not blamed; where harassment and retaliation are not tolerated
  - Hold harassers **accountable**, no matter what level or star status

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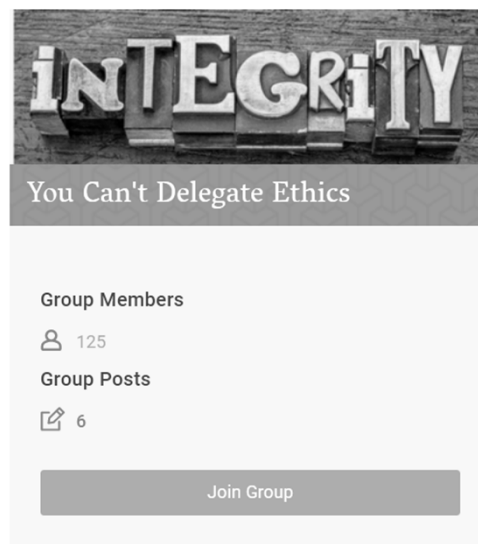
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## You Can't Delegate Ethics

### Join the discussion group

- A workplace free of harassment and discrimination cannot be delegated to your code of conduct or training program. It must be embraced by leadership and consistently reinforced. Share your thoughts and best practices on how you are addressing sexual misconduct and other harassment in your workplace.

**ComplianceNext.com > Groups**



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## Questions?

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## Thank You!

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Compliance & Ethics Solutions

Gilen Chan  
[gchan@citytech.cuny.edu](mailto:gchan@citytech.cuny.edu)  
718-260-4983

Debbie Hennelly  
[dhennelly@callces.com](mailto:dhennelly@callces.com)  
[www.callces.com](http://www.callces.com)  
973-543-0111

Carrie Penman  
[cpenman@navexglobal.com](mailto:cpenman@navexglobal.com)  
[www.navexglobal.com](http://www.navexglobal.com)  
781-271-1317

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