

Harassment and Discrimination in the Workplace

MONICA HARRISON – HR MANAGER SDAO

Introduction



Monica Harrison
– HR Manager



Joined SDAO
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Agenda and Goal for today

Agenda

Review of harassment, discrimination, retaliation
in the workplace

Goal

Information and affirmation

- Previous harassment trainings
- Learn new or confirm what you already know

mharrison@sdao.com

hr@sdao.com

EEOC Releases Fiscal Year 2019 Enforcement and Litigation Data

The U.S. Equal Employment Opportunity Commission (EEOC) released detailed breakdowns for the **72,675 charges of workplace discrimination the agency received in fiscal year 2019.**

Data show that **retaliation** continued to be the most frequently filed charge followed by disability, race and sex.

The agency also received **7,514 sexual harassment charges.**

Breakdown of charges

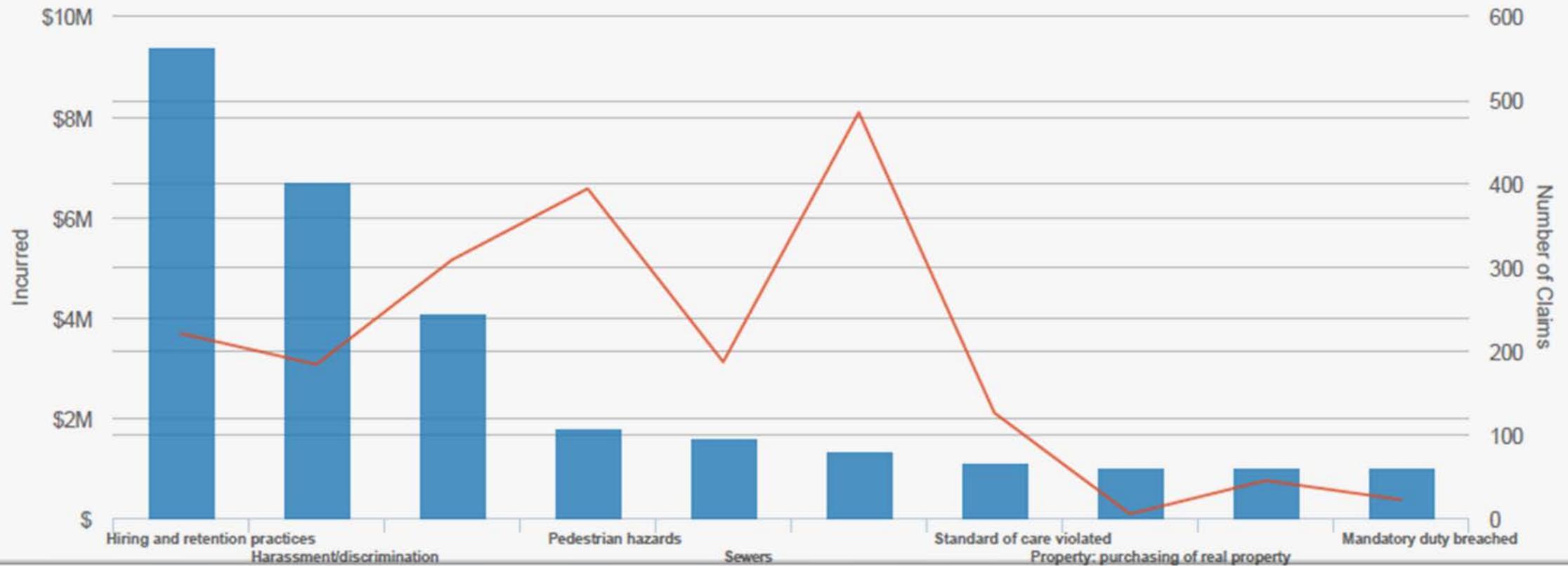
1. **Retaliation:** 39,110 (53.8 percent of all charges filed)
2. **Disability:** 24,238 (33.4 percent)
3. **Race:** 23,976 (33.0 percent)
4. **Sex:** 23,532 (32.4 percent)
5. **Age:** 15,573 (21.4 percent)
6. **National Origin:** 7,009 (9.6 percent)
7. **Color:** 3,415 (4.7 percent)
8. **Religion:** 2,725 (3.7 percent)
9. **Equal Pay Act:** 1,117 (1.5 percent)
10. **Genetic Information:** 209 (0.3 percent)

Sum of Incurred by Accident Type

Program: Special Districts Association of Oregon

Claim Type: General Liability

Policy Years: 1987 to 2020



Things to keep in mind

Going to give some scenarios of true examples of the kinds of complaints and issues SDAO has assisted with.

None of these went to court but a lot of time, effort and potential liability.

Is this harassment?

Small-ish office. A male vendor keeps coming into the office and spending a LONG time talking with the (young, female) receptionist about non-work related topics. Employee complains but employer says that there is nothing they can do because they don't "control" the vendor. Employee continues to raise the issue and it is not corrected.

Is this harassment?

The owner is engaging in friendly banter with employees. Discussion of current events, including “cultural” issues such as rape, women’s roles in society in other cultures. There were no complaints or issues, but it comes to light after an employee is fired/quits that she was recording the conversations. The subject matter was used to portray the owner as a “bad guy”.

Is this harassment?

Issue arose between two female employees regarding their personal relationships with another (more senior) coworker.

Investigation was done and it was determined that the male co-worker was engaging in an ongoing sexual relationship with both women. Male co-worker was not direct supervisor but held a position of authority within the organization.

Is this harassment?

A supervisor and employee had been dating on and off for a few years. The supervisor engaged in sending and receiving sexually charged inappropriate memes to all of the employees in his department. Even after they broke up, he continued to send these memes over social media outlets on his work provided phone. She asked him to stop which resulted in him retaliating against her by giving bad schedules and also commenting on people she was dating. She ended up quitting and on exit interview let them know about what was going on. The district conducted an investigation and ended up terminating the manager.

Do you remember the MeToo movement?

Me Too movement is a movement against sexual harassment and sexual assault

Actually began a decade ago (by Tarana Burke), but with celebrities taking action, has become very prominent.

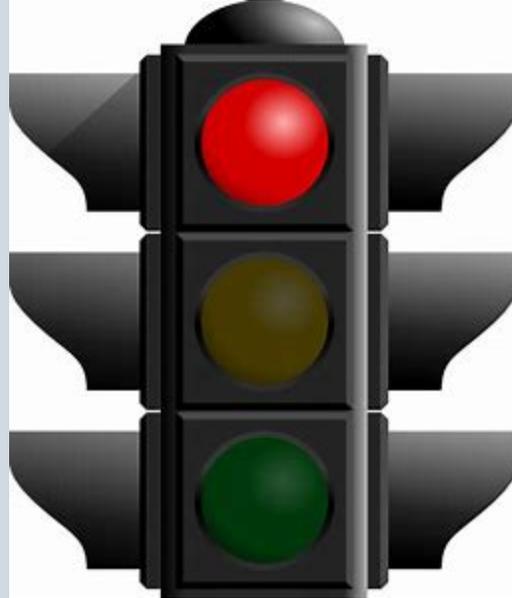
Tarana Burke (born September 12, 1973) is an American activist from The Bronx, New York who started the Me Too movement.

After working with survivors of sexual violence, Burke developed the nonprofit "Just Be" in 2003, which was an all-girls program for black girls aged 12 to 18.

In 2006, Burke founded the MeToo movement and began using the phrase "Me Too" to raise awareness of the pervasiveness of sexual abuse and assault in society.

https://en.wikipedia.org/wiki/Tarana_Burke

Unlawful Harassment, Discrimination and Retaliation



Protected Classes and Protected Activity

Protected Class – Who you are	Protected Activity – What you do
Race	Served in the Military
Color	Use of Protected Leave
National Origin	Opposed unlawful practice
Sex	Associate with a member of a protected class
Pregnancy	Had wages garnished
Disability	Expunged Juvenile record
Age (over 18 in Oregon)	Filed bankruptcy
Marital Status	Testified in criminal or civil proceedings
Family Relationships	Used tobacco in off duty hours
Injured Worker (Work Comp)	
Sexual Orientation	
Religionand more	

What is

1. Unlawful Discrimination

To treat someone differently because of their **protected class status**;

2. Hostile Work Environment (Harassment)

To impose liability, conduct must create a work environment that would be intimidating/hostile/offensive to a reasonable person.

The **employer** can be held **liable** for failing to prevent these workplace conditions.

3. Sexual Harassment

3. Retaliation



Types of Harassment

Discrimination/Hostile Work Environment

Sexual Harassment

- Quid Pro Quo Harassment
- Hostile Work Environment

Retaliation

What is Unlawful Harassment?

Harassment violates the law, and creates a “hostile work environment,” if it involves:

- Discriminatory treatment on the basis of
 - Any *protected class status*; or
 - Any *protected activity* under the anti-discrimination or other employment law statutes

HOSTILE

Work Environment

What is a hostile work environment?

The law does not prohibit simple teasing or offhanded comments.

The conduct must be **so objectively offensive** as to “alter the conditions of the victim’s employment”.

The conditions of employment are altered only if the harassment (based on protected class status):

- Culminated in a tangible employment action; or
- Was **sufficiently severe or pervasive** to create a hostile work environment

*“sufficiently
severe or
pervasive”*

To determine whether the environment is/was sufficiently severe and pervasive to alter conditions of the employee’s employment and create an abusive working environment, the following factors are considered:

- Was the contact verbal or physical?
- How frequently was the conduct repeated?
- Was the conduct hostile or blatantly offensive?
- Was the harasser a co-worker or supervisor?
- Did others join in perpetrating the harassment?
- Was the harassing directed at more than one individual?

Single Incident Harassment

A single episode, or a single comment, can create an unlawful hostile work environment if it is:

- Severe
- Unusually demeaning
- Physical, particularly where threatening

Intent vs. Impact

The court's have ruled that:

- It is not the intent of the alleged harasser the court consider, but..
- Instead they focus on the perception of the victim in making their decision.

SEXUAL
HARASSMENT



What is sexual harassment?

Sexual harassment constitutes discrimination and is **illegal under federal and state law**

Title VII of the Civil Rights Act of 1964 recognizes two types of sexual harassment:

- a) quid pro quo and
- b) hostile work environment.

Oregon Law provides further protection from sexual assault/harassment defined as unwanted conduct of a sexual nature that is inflicted upon a person or compelled through the use of physical force, manipulation, threat, or intimidation.

Quid pro quo

- Involves a supervisor, manager or someone in authority.
- When submission to sexual demands is a term or condition of employment (or when refusing sexual demands is a basis for employment decisions).
- Offers to give employment benefits or let an employee keep them in exchange for sexual favors.
- **One single event is enough.**

Sexual Harassment – Quid Pro Quo

Sexual Harassment - Hostile Work Environment

A “hostile work environment”:

- Unwelcome sexual advances.
- Visual, verbal, or physical conduct of a sexual nature, or requests for sexual favors.



Types of Sexual Harassment

Verbal

Physical

Visual

Verbal Harassment

Dirty Jokes

Innuendos

Sexually degrading words

Cussing

Inappropriate compliments

Physical Harassment

Assault

Impeding or blocking movement

Any physical interference with individuals normal work or movement

Visual Harassment

Derogatory posters

Sexual gestures or leering

Sexually oriented cartoons, pictures, drawings, objects, emails etc.

Sexual Harassment can occur;

Between the
supervisor and
subordinate

Between
coworkers

Between
employees and
non-employees

Between
members of
the same sex

On the basis of
gender identity

On the basis of
sexual
orientation

What the Harassment Cases Teach Us

Sexual harassment can be a legal violation long before the conduct affects psychological well being.

Different people can have very different views of the conduct that may constitute sexual harassment — one person's teasing can be another person's "torment".

It does not depend on the gender of the participants (men can unlawfully harass men).

It is unlawful to harass a person because of that person's sex.

Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.

Harassment does not have to be of a sexual nature, however, and **can include offensive remarks about a person's sex**. For example, it is illegal to harass a woman by making offensive comments about women in general.

Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex.

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Sexual Harassment - Summary



RETALIATION

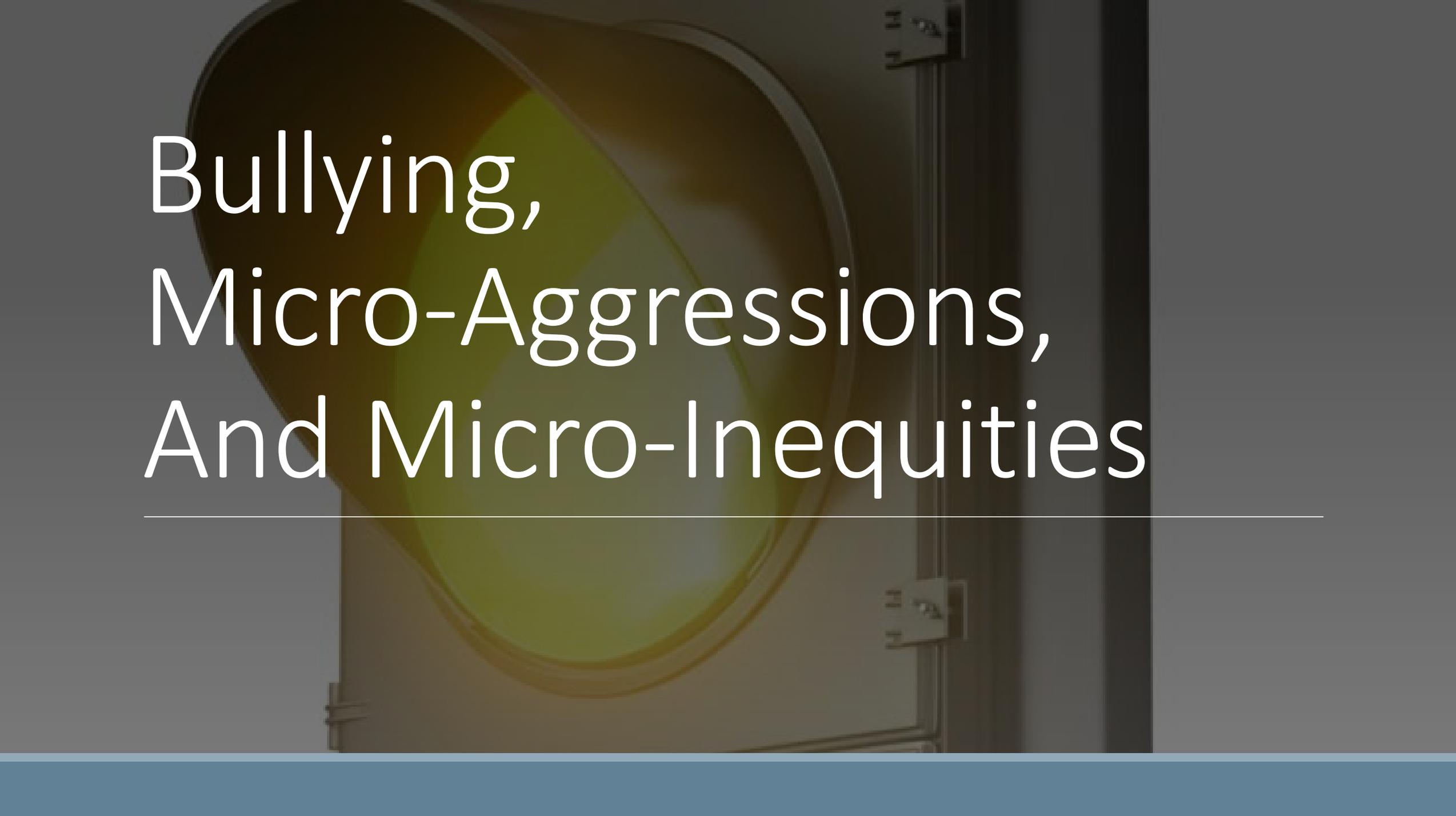
Retaliation: Also Illegal Discrimination

What: A bad employment action happens (hiring, termination, demotion, etc.)

Why: Because the employee has:

- Made a good-faith complaint about discrimination, unequal pay, harassment, gross mismanagement of funds, or some other unlawful conduct; OR
- Filed a grievance, talked to a lawyer, or filed a complaint with BOLI/EEOC or OSHA.

YOU'RE FIRED!



Bullying, Micro-Aggressions, And Micro-Inequities

What is Bullying?

Actions that are

- Repeated or serious.
- Unreasonable or unwarranted .

Directed at

- An individual or group (typically weaker or defenseless).

If they

- Are intended to intimidate, offend, humiliate, or degrade or create a risk to safety and/or mental or physical health.



Examples of Bullying

Verbal abuse

Nonverbal abuse

Making fun of someone

Name calling

Practical jokes
(directed at one person)

Malicious gossip

Discrediting

Threats (any kind)

10 Common Forms of Workplace Bullying

Pranksters

Sabotage

Critics

Cliques

Hairy Eyeballs

The Freeze Out

Loud Voices

Gossip

Puppet Masters

Agree-With-Me-Or-Else

<http://workplace.care.com/10-types-of-workplace-bullying-and-how-to-stop-it>

What Isn't Bullying



Having high work standards for everyone



Having high expectations for everyone



Enforcing deadline requirements for everyone



Keeping work and workers on time for everyone



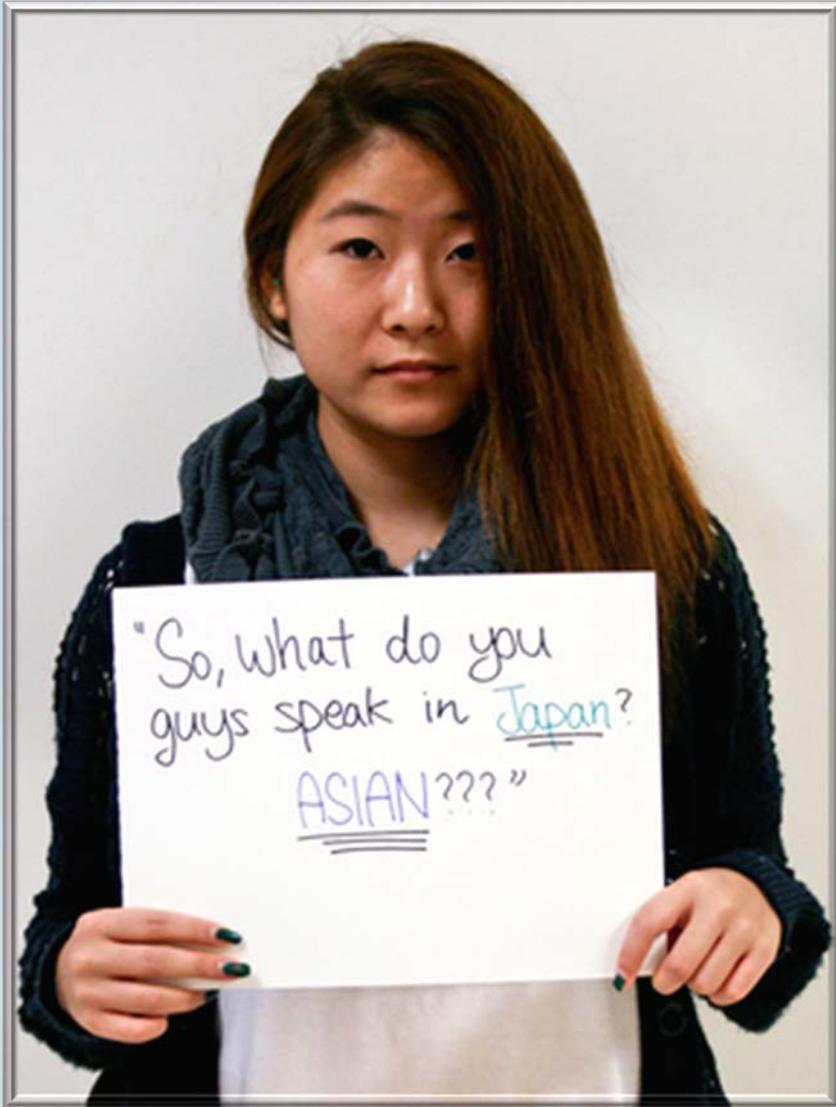
Tracking attendance for everyone



Enforcing the rules for everyone



Holding people accountable



What are Micro-Aggressions?

Everyday verbal or nonverbal slights, snubs, and insults, which:

- Communicate hostile, derogatory, or negative messages.
- Directed towards members of non-dominant groups by members of a dominant group.
- Can be intentional, **but are often unintentional.**

Micro-aggressions are more than just insults, insensitive comments, or generalized jerky behavior. They're something very specific: the kinds of remarks, questions, or actions that are painful because they **have to do with a person's membership in a group** that's discriminated against or subject to stereotypes. And a key part of what makes them so disconcerting is that **they happen casually, frequently, and often without any harm intended, in everyday life.**

<https://www.vox.com/2015/2/16/8031073/what-are-microaggressions>

What Are Micro-Aggressions?

What do Micro- Aggressions look like?

Complimenting a co-worker who is a person of color “You speak English well.”

Asking a co-worker of a different race “How long have you been in the United States?” or “Where are you actually from?”

Sharing with a co-worker with a disability that you are inspired by the way they have overcome their disability.

Telling a co-worker that their name is hard to pronounce.



What are Micro- Inequities?

Small events, damaging action or comments done in passing, in which individuals are:

- Singled Out
- Overlooked
- Ignored
- Discounted based on an unchangeable characteristic (race or gender)
- Whenever people are perceived to be different than the “norm”

What do Micro- Inequities look like?

Little acts of disrespect

Off-handed remarks

Critical comments followed with “I was just teasing” or “Just kidding!”

Comments on physical appearance

People not introduced in a meeting

Jokes that make fun of groups, cultures, etc.

What do Micro- Inequities look like?

Consistently ignoring emails/text messages

Leaving employees out of a discussion/project

Reading/sending emails or text messages during a conversation

Continually interrupting or completing sentences

Not introducing an employee in a meeting and ignore them

Mispronouncing or misspelling someone's name

Saying "good morning" to all employees except one



MICRO-BEHAVIOURS

E-LEARNING & VIDEO RESOURCES

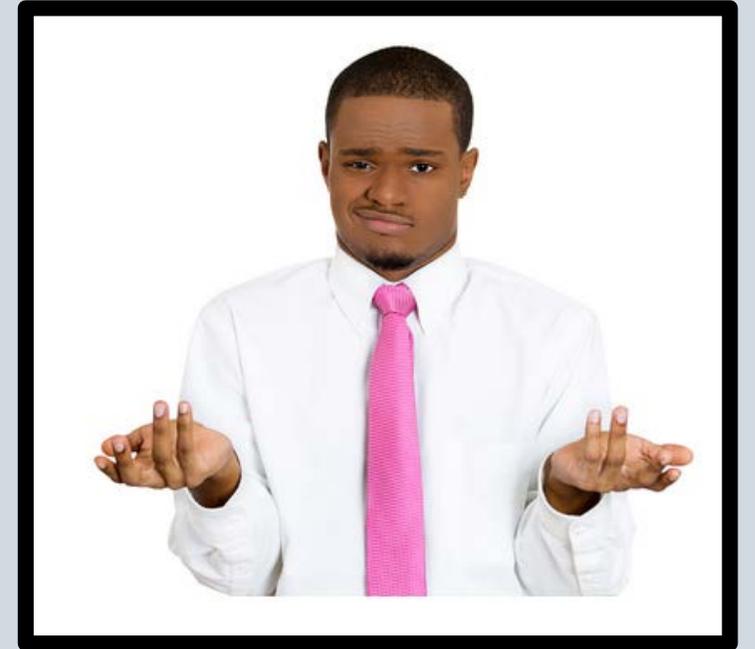
www.skillboosters.com

What's the Big Deal?

If these inequities are so small, why can't the people on the receiving end simply "get over it"? Shouldn't they "toughen up" and stop being "so sensitive?"

Don't think of it as sensitivity; it's about productivity.

If we believe inclusive workplaces are key to productive workplaces, it's important to look for ways to continuously improve, not only in the results we deliver, but also in how we engage and interact as we produce those results.



Why should we care about micro-aggressions and micro-inequities?

It's good for business - interferes with efficient and effective work performance.

Employers are not necessarily immune to bullying claims.

Conduct could be used as evidence of discrimination or a "hostile work environment".

The law could change – several states already have laws.

Supervisors and Managers Take Action

Supervisor cannot promise to “just listen and be aware”.

Once a supervisor receives a report of harassment or discrimination, a supervisor has an obligation to take action.

Exercise reasonable care to prevent and promptly correct any discrimination or harassment they know or should know about.

SB 479 requires all public employers to have a harassment policy in place by 1.1.2020

SB 479 is very specific as to what must be contained in your workplace harassment policy

- Harassment defined – No Tolerance
- Reporting obligations (victim or witness)
 - Complaint process (who and how)
 - Investigation process
 - Disciplinary action
 - No-retaliation
 - Requirement to follow up with victim
- Discuss during onboarding with new hires
 - Provide copy of policy
 - More

Harassment Policy



Thank you!

Submit follow up questions to;

hr@sdao.com