

The Shocking Facts about Harassment Prevention Training

Rodney Jordan
SVP HR, General Counsel & Secretary
The TLC Companies

Amanda Snowden, SPHR
Of Counsel
Hagan, Noll & Boyle, LLC

Let's Start with a Little Audience Participation



Question 1

Does your company conduct harassment training for in house staff and managers?

A = Yes

B = No

Question 2

When is the last time that YOU completed your company's harassment training?

A = Within the past year

B = Within the past 2 years

C = Within the past 3 years

D = Can't recall

Question 3

Does your company conduct harassment training for client locations and worksite employees?

A = Yes

B = No

Question 4

If you answered “YES” to Question 3, how do you currently deliver harassment training to your clients?

A = In Person, by Our Employees

B = Computer-Based, Developed In-House

C = In Person, by a 3rd Party Vendor

D = Computer-Based, Developed by a Vendor

E = Some combination of the options above

Question 5

The training offered by my company covers:

A = Sex Harassment Only

B = Harassment based on Sex and at least 1 Other Protected Class

C = Harassment based on Sex and at least 3 Other Protected Classes

D = Harassment based on Sex and 4 or More Other Protected Classes

Question 6

Over the past 5 years, the number of harassment complaints in our company and client base have:

A = Increased

B = Decreased

C = Remained the Same

Question 7

We currently use data from the harassment complaints we receive to update our policies and/or training:

A = Yes

B = No

C = Don't Know

The Typical Reaction to Harassment Training...



How do we know?

Findings of the EEOC Select Task Force on the Study of Harassment in the Workplace were released on June 20, 2016

- After 30 years of Harassment Training in workplaces across the country, the Task Force found ZERO Impact on the occurrence of harassment in the workplace
- 1/3 of the 90,000 charges received by EEOC in 2015 included an allegation of workplace harassment
- Only 25% of people who experience harassment actually report it, so what we see at the EEOC is just the tip of the iceberg



NEW YORK

The Revenge of Roger's Angels

How Fox News women took down the most powerful, and predatory, man in media.

By **Gabriel Sherman**



<http://nymag.com/daily/intelligencer/2016/09/how-fox-news-women-took-down-roger-ailles.html>

www.shrm.org

No Evidence That Training Prevents Harassment, Finds EEOC Task Force

Other Findings made by EEOC



- Workplace Harassment is a persistent problem
- Often goes unreported
- Tone from the Top – leadership and accountability are critical
- Training must change and we should explore new and different training approaches
- “It’s On Us” to stop harassment

Other Findings made by EEOC



- While sex-based harassment has been studied at length, much more study is needed in all other areas
 - Race
 - Disability
 - Gender ID & Sexual Orientation
 - Age
 - Religion
- Most diverse workforce in history
- Reporting is the least common response to harassment
- 12 key risk factors that tend to increase the likelihood of harassment

Risk Factors for Harassment



- Homogenous Workforces
- Some Workers Fail to Conform to Norms
- Cultural and Language Differences
- Coarsened Social Discourse Outside the Workplace
- Many Young Workers Present
- Workplaces with “High Value” Employees
- Workplaces with Significant Power Disparities
- Reliance upon Customer Service or Client Satisfaction
- Monotonous Work or Low-Intensity Tasks
- Isolated Workspaces
- Tolerance or Encouragement of Alcohol Consumption
- Decentralized Workplaces

Have we Already Lost You?



Why do we care?

Harassment Training is important for all businesses, but it is especially important for the PEO Value Proposition

- Harassment Training is KEY to supporting any employer's defense to a charge or other harassment claim
- Direct Costs of workplace harassment are significant
- Workplace harassment impacts *all* employees and the Indirect Costs include decreased productivity, increased turnover and reputational harm
- One of a PEO's greatest value-adds comes from the improvement in employee engagement through optimized human capital management, including harassment training and prevention

Among the Numerous Studies on Sex Harassment:

HOW COMMON IS SEXUAL HARASSMENT OVERALL?



WHO IS SEXUALLY HARASSING?

75%

SAY THEY WERE TARGETED BY
MALE COWORKERS

49%

SAY THEY WERE HARASSED BY
MALE CLIENTS OR CUSTOMERS

38%

SAY THEY WERE HARASSED BY
MALE MANAGERS

10%

SAY THEY WERE HARASSED BY
FEMALE COWORKERS

*

Cosmopolitan, 2015 Sex Harassment Survey

* Women in the Tech Industry



Of 222 Female Executives surveyed:

- 60% received unwanted sexual advances
 - Of those, 65% reported that the advance was made by a superior
- 90% witnessed sexist behavior at offsite meetings and industry conferences
- 66% were excluded from key networking and social functions

The Elephant in the Valley survey also examined more subtle examples of bias:

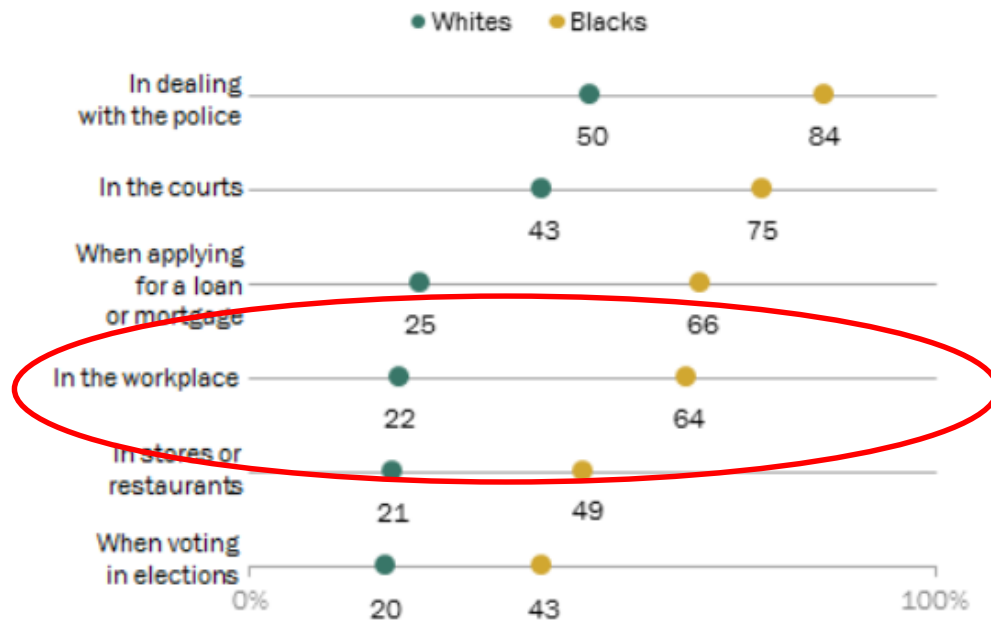
- 75% reported interview questions re: family and marital status
- 52% shortened their FML following the birth of a child for fear of negative career impact
- 69% did not report harassment, and of those who did, 60% reported dissatisfaction with outcome

Not Enough Data on Race-Based Harassment

Pew Research Center Survey on Race in America, June 29, 2016

Perceptions of how blacks are treated in the U.S. vary widely by race

% saying blacks are treated less fairly than whites in the country



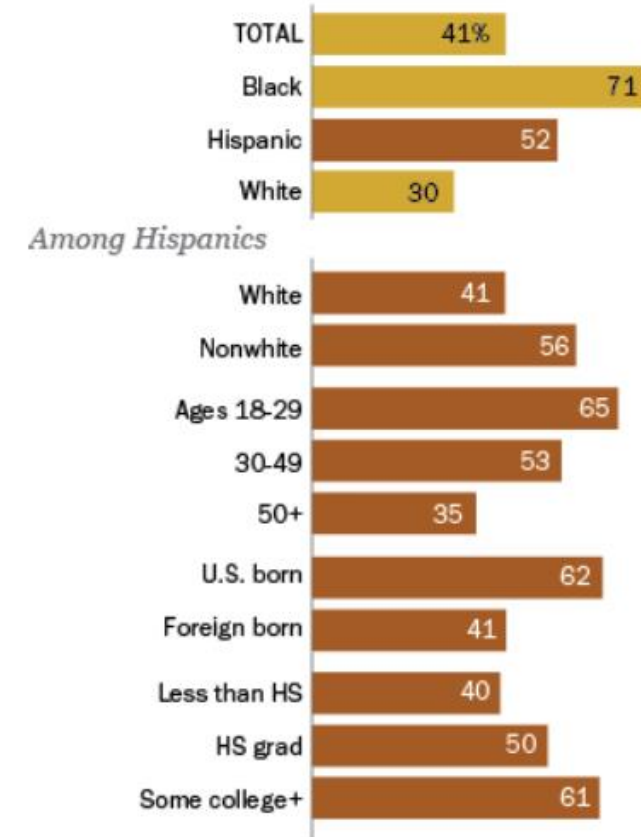
Note: Whites and blacks include only non-Hispanics.

Source: Survey of U.S. adults conducted Feb. 29-May 8, 2016. Q19F2a-f. "On Views of Race and Inequality, Blacks and Whites are Worlds Apart"

PEW RESEARCH CENTER

Young and U.S.-born Hispanics more likely to experience discrimination

% who say they have regularly or occasionally experienced discrimination or have been treated unfairly because of their race or ethnicity



Note: Unless otherwise noted, whites and blacks include non-Hispanics. Hispanics are of any race.

Source: Survey of U.S. adults conducted Feb. 29-May 8, 2016. "On Views of Race and Inequality, Blacks and Whites Are Worlds Apart"

PEW RESEARCH CENTER

What about Religion?



- 50% of non-Christians surveyed believe that their employers ignore their “religious needs”
- 60% of Evangelical Protestants believe discrimination against Christians has become as “big a problem” as discrimination against religious minorities

Tanenbaum Center for Interreligious Understanding, 2013 as reported in HR Magazine, December 2013

Time for More Audience Participation



Question 8

Does your leadership make harassment training a priority for the company?

A = Yes

B = No

Question 9

When conducting harassment training at client worksites, do you provide an opportunity for the business owner to express their commitment to a diverse and welcoming workplace?

A = Yes

B = No

Question 10

Our PEO currently conducts some form of civility or workplace etiquette for our employees.

A = Yes

B = No

Question 11

Our PEO offers some form of civility or workplace etiquette training for our clients and worksite employees.

A = Yes

B = No

Question 12

We conduct employee engagement or climate surveys for our clients in part to determine the extent to which harassment occurs in the workplace:

A = Yes

B = No

C = Don't Know

Question 13

For those who answered “YES” to Question 12, is your PEO using data from client climate surveys to set priorities for HR services and training for the worksite:

A = Yes

B = No

C = Don't Know

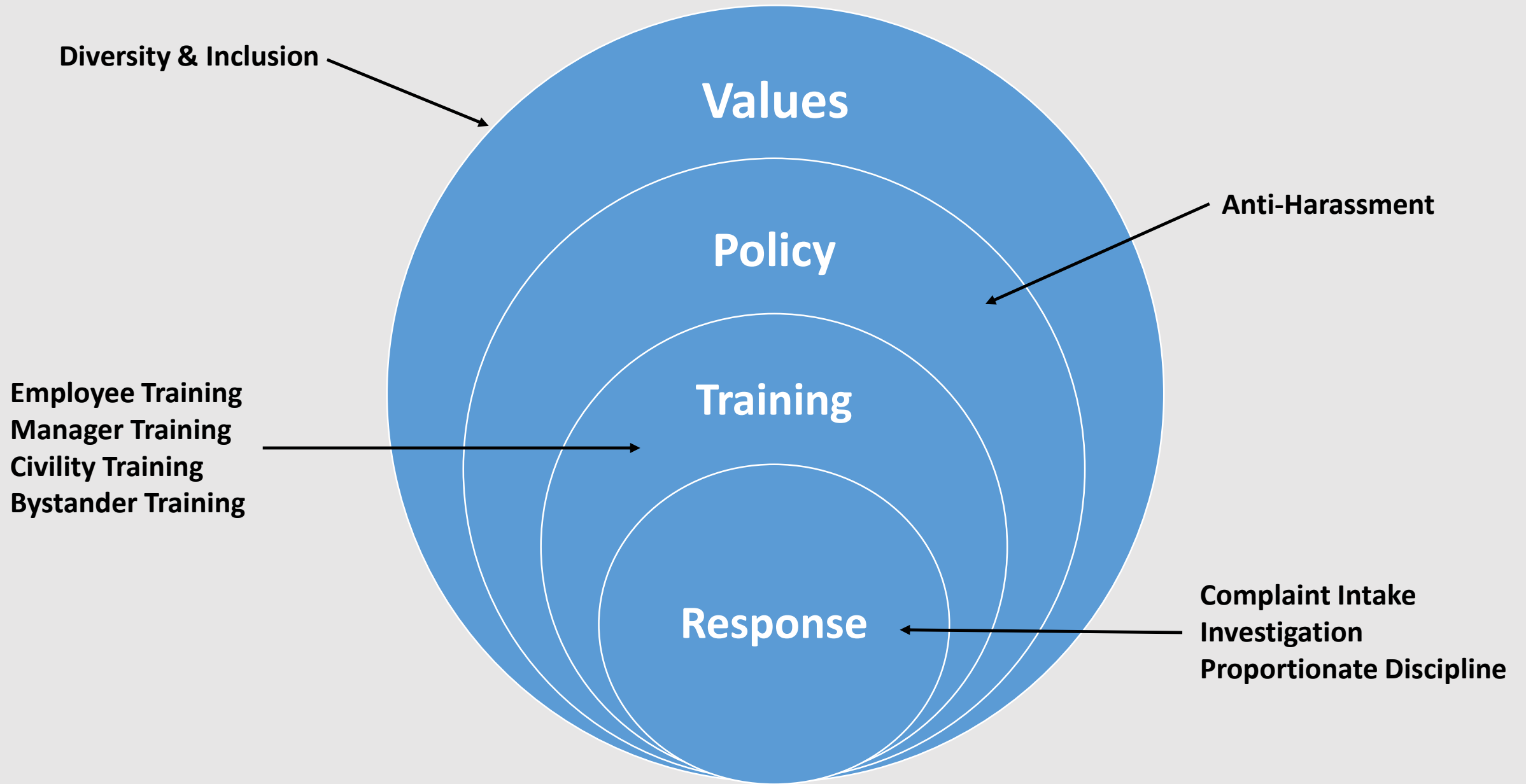
“The most important thing we learned from our study is that employers must have a holistic approach for creating an organizational culture that will prevent harassment.”

Components of a “Holistic Approach”

- Cultures that promote respect and civility, with no room for harassment
- Assess and minimize risk factors associated with harassment
- “Climate” surveys designed to measure the harassment problem
- Resources dedicated to harassment prevention efforts
- Disciplinary action in response to harassment is prompt and proportionate
- Managers held accountable for preventing / responding to workplace harassment, through metrics and performance reviews
- Dedicated budget and strategy for harassment prevention

Components of a “Holistic Approach”

- **Cultures that promote respect and civility, with no room for harassment**
- **Assess and minimize risk factors associated with harassment**
- “Climate” surveys designed to measure the harassment problem
- Resources dedicated to harassment prevention efforts
- Discipline in response to confirmed harassment is prompt and proportionate
- Managers held accountable for preventing / responding to workplace harassment, through metrics and performance reviews
- Dedicated budget and strategy for harassment prevention



Training for All Employees Should:

- Help employees understand the forms of conduct that are unacceptable in the workplace
- Be tailored to the ***specific*** realities of the workplace
- Take different levels of education into account
- Clarify what conduct is not harassment, such as performance feedback
- Make clear to employees ***multiple*** avenues for reporting
- Describe the formal complaint process, including what degree of confidentiality can be expected
- Re-affirm that those making complaints will not experience retaliation their use of the reporting process

Training for Managers

- Managers and Supervisors should understand their accountability
- Focus on concrete actions required to:
 - Prevent harassment
 - Stop and remedy harassment when it occurs
- Stresses affirmative duties of managers to address harassment, even in the absence of a complaint

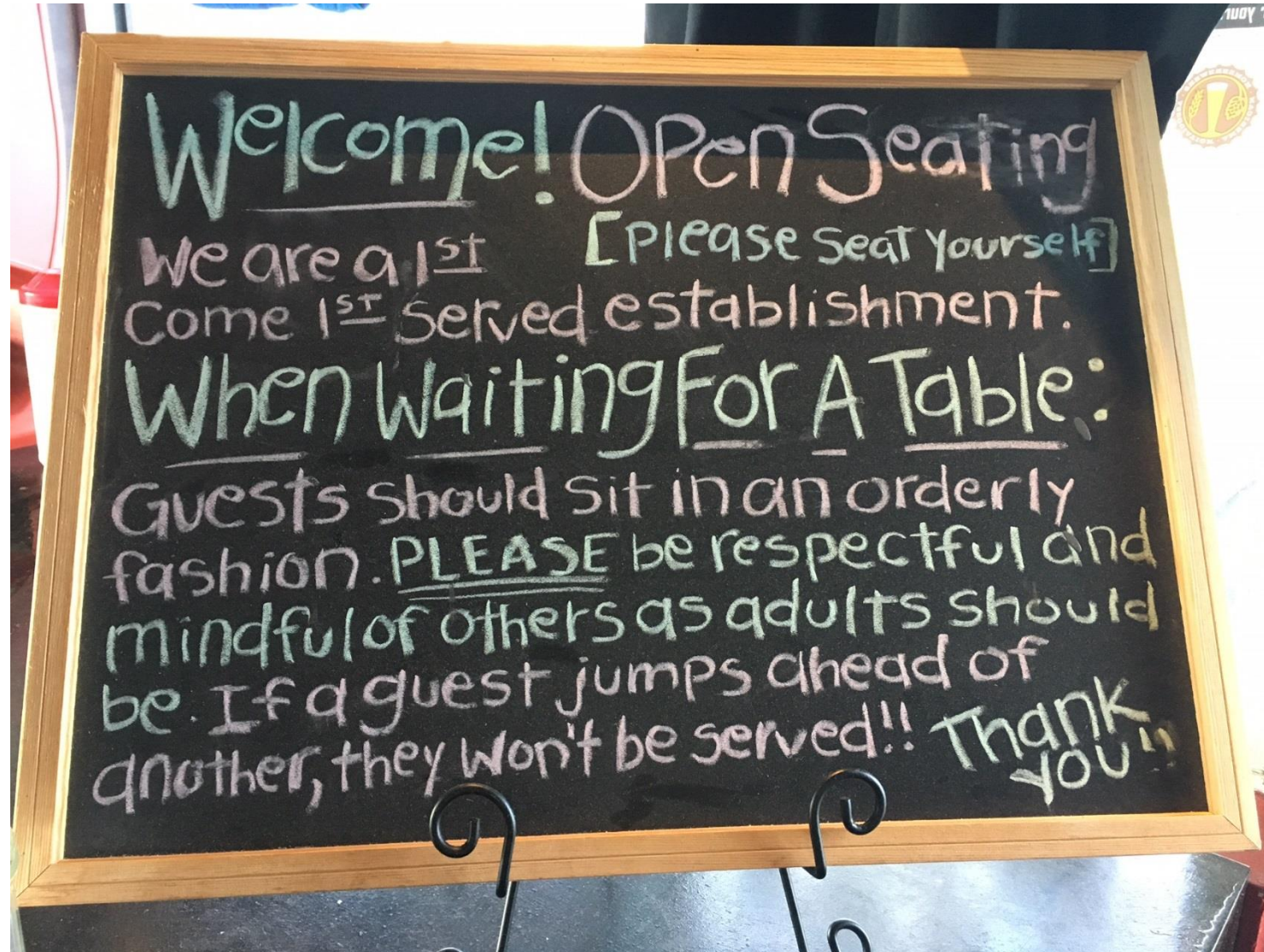


Workplace Civility Training



- Often used in workplaces where bullying or conflict are common
- Designed to promote respect and civility across the board
- Establishes expectations for respect in the workplace, to prevent undesirable behaviors from spiraling into harassment
- Explores workplace norms, and incorporates skills training
- Focuses on what managers and employees ***should*** do

From Freetail Brewery in San Antonio, Texas



Welcome! Open Seating

We are a 1st [Please Seat Yourself]
Come 1st Served establishment.

When Waiting For A Table:

Guests should sit in an orderly
fashion. PLEASE be respectful and
mindful of others as adults should
be. If a guest jumps ahead of
another, they won't be served!! Thank
you!!

Bystander Intervention Training

- Traditionally viewed as a violence prevention strategy
- Changes social norms
- Four Strategies
 - Awareness
 - Sense of Collective Responsibility
 - Sense of Empowerment
 - Provide Resources
- “Three D’s”
 - Direct Confrontation
 - Distraction
 - Delegation



A Word About...

US

IT'S ON

Kick the Can



Risk Factors for Harassment



- Homogenous Workforces
- Some Workers Fail to Conform to Norms
- Cultural and Language Differences
- Coarsened Social Discourse Outside the Workplace
- Many Young Workers Present
- Workplaces with “High Value” Employees
- Workplaces with Significant Power Disparities
- Reliance upon Customer Service or Client Satisfaction
- Monotonous Work or Low-Intensity Tasks
- Isolated Workspaces
- Tolerance or Encouragement of Alcohol Consumption
- Decentralized Workplaces

Customize for the Workplace



- Take the time to customize for the audience
- If you have a shortage of resources, customize for managers
- Use a combination of industry-specific examples with information gathered in your risk assessment
- Where possible, incorporate results from the company's own reports and resolutions of harassment complaints

The Structure of Successful Programs

- All Trainings should be supported from the highest levels in the Company
- Training should be conducted and reinforced on a regular basis for all employees
- Training should be conducted by qualified, live and interactive trainers
- Training should be routinely evaluated

Your Turn - Audience Participation



Question 14

When conducting harassment training, we spend time on specific conduct and behaviors that are relatable to the workforce we are training.

A = True

B = False

Question 15

Our PEO maintains a anonymous reporting hotline to receive complaints of harasssment and other violations of our policies and/or code of conduct.

A = True

B = False

Question 16

Our PEO makes a anonymous reporting hotline available to our client companies and worksite employees.

A = True

B = False

Question 17

Do you conduct formal evaluations of your harassment training programs?

A = Yes

B = No

Question 18

Are you concerned that opening the conversation with your clients on harassment in their workplaces will cost you business?

A = Yes

B = No

Question 19

As you leave us today, do you intend to revisit your company's current harassment training with HR, Legal and/or your CRMs?

A = Yes

B = No

Start with a Conversation



- Talk with your HR leaders, your Legal Counsel, and survey your CRMs or Client Liaisons to get a sense for your PEO's experience with harassment
 - Try to gauge the extent of non-reporting
 - Consider an audit or review of the reports you have received
- Ask your training vendors how they are incorporating the EEOC's findings and the 12 Risk Factors into their products
 - Determine what content remains viable, and what needs a reboot
- Contact your EPLI Carrier or your Broker to discuss the trends in your claims experience and ask about resources they are developing in response to the EEOC Findings

Remember Why it's Worth It

- Tremendous direct and indirect costs associated with harassment in the workplace
- We can all agree that providing employees with a workplace free of harassment is desirable for everyone
- EEOC will seek terms and conditions in its future settlement, conciliation and consent decrees that
 - Require training in line with the Task Force's Findings
 - Permit researchers come into the workplace to assess the climate, the level of harassment, and effectiveness of the training offered
 - Set forth the manner in which your company implements reporting systems, investigation procedures and proportionate discipline

The Shocking Facts about Harassment Prevention Training

Rodney Jordan
SVP HR, General Counsel & Secretary
The TLC Companies

Amanda Snowden, SPHR
Of Counsel
Hagan, Noll & Boyle, LLC