

GOOD-BETTER-BEST

— Preventing Misconduct through Competence and Commitment —

FRAN
SEPLER

OVERVIEW

We will review the realities of unlawful (and lawful) harassment and its relationship to workplace culture

We will review the elements of a proper policy, and things to think about in yours.

We will talk about organizational capabilities when an incident is reported

We will review the importance of supervisory capabilities and competence

We will discuss good, better and best in class training

DEFINITIONAL CLARITY

Misconduct

Harassment

Assault

Sexual Assault (Criminal)

Penetration or Contact or Exposure

Absence of Consent or Inability to Consent

May be degrees, but all criminal



UNLAWFUL HARASSMENT (Hostile Environment)

Unwelcome

Pervasive or Severe

Offensive to a Reasonable Person

Based on Protected Class

- Sexual or Gender Based

Interferes with Terms and Conditions of
Employment

MISCONDUCT

Behavior which violates policies regardless of whether it rises to a level of unlawful harassment

Bar can be much lower than legal requirements

CONTINUUM

Respectful
Behavior

Disrespectful,
Uncivil or
Rude Behavior

Abusive
Behavior

Harassing
Behavior

Assaultive
Behavior

Derailers

- **Rude and Uncivil**
 - Corrosive and more damaging than assumed
 - Precursor to gendered hostility
- **Abusive Behavior**
 - Loud
 - Quiet (Relational Aggression)
 - Mobbing
- **Unlawful Harassment**

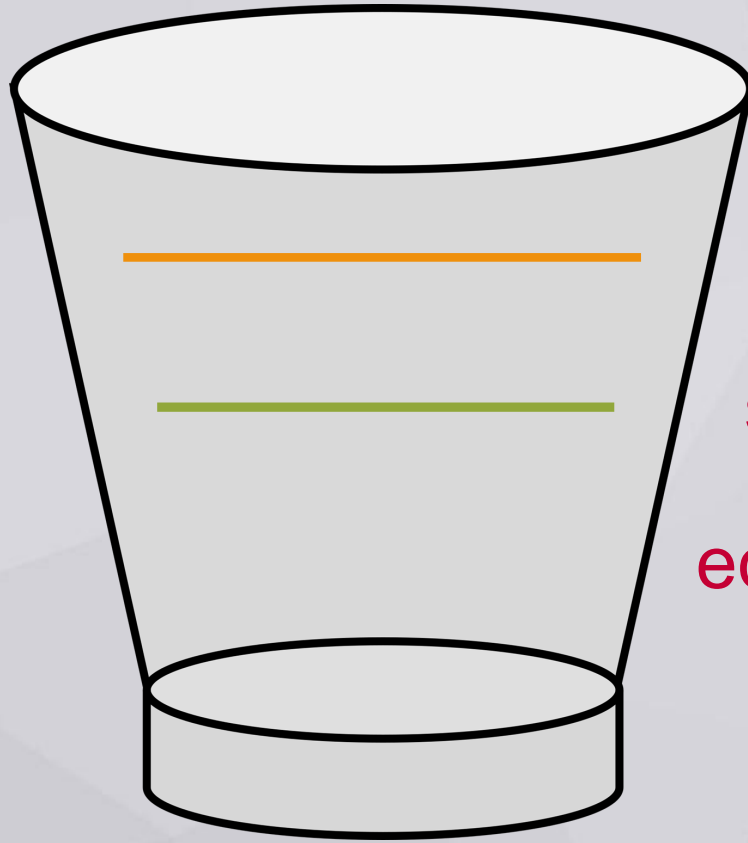
Important To Consider

- When it comes to sexual harassment, gender harassment (put downs) far more common than sexualized behavior (come ons) with equally severe wounds involved.
 - Gender Harassment happens repeatedly and is corrosive and sneaky in its damage.

THE PSYCHOLOGY OF A HARASSMENT COMPLAINT

——— Models to Understand ———

FULL CUP



saturation

stress

equilibrium

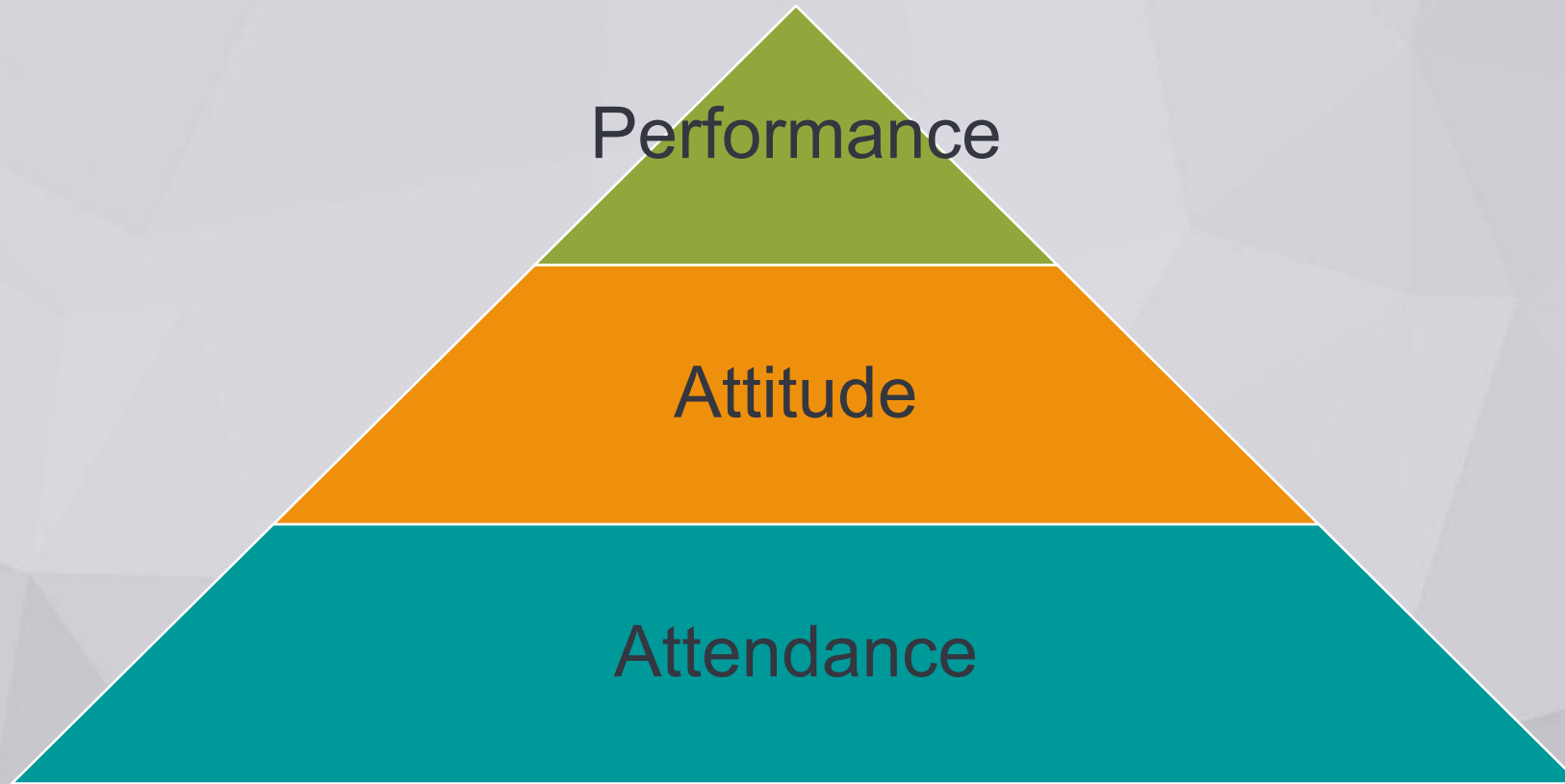
REQUEST TO REPORT CONFIDENTIALLY

“I can’t guarantee confidentiality.”

“When people come to me asking for confidentiality it’s often because they are hurting. My experience is that these things don’t get better until you do something about them, so I hope you’ll tell me what’s going on, even though I can’t keep it a secret.”

“There are some things I can keep between you and me and some things I can’t, but I hope you will let me help.”

EMPLOYEE ISSUE TRIAD

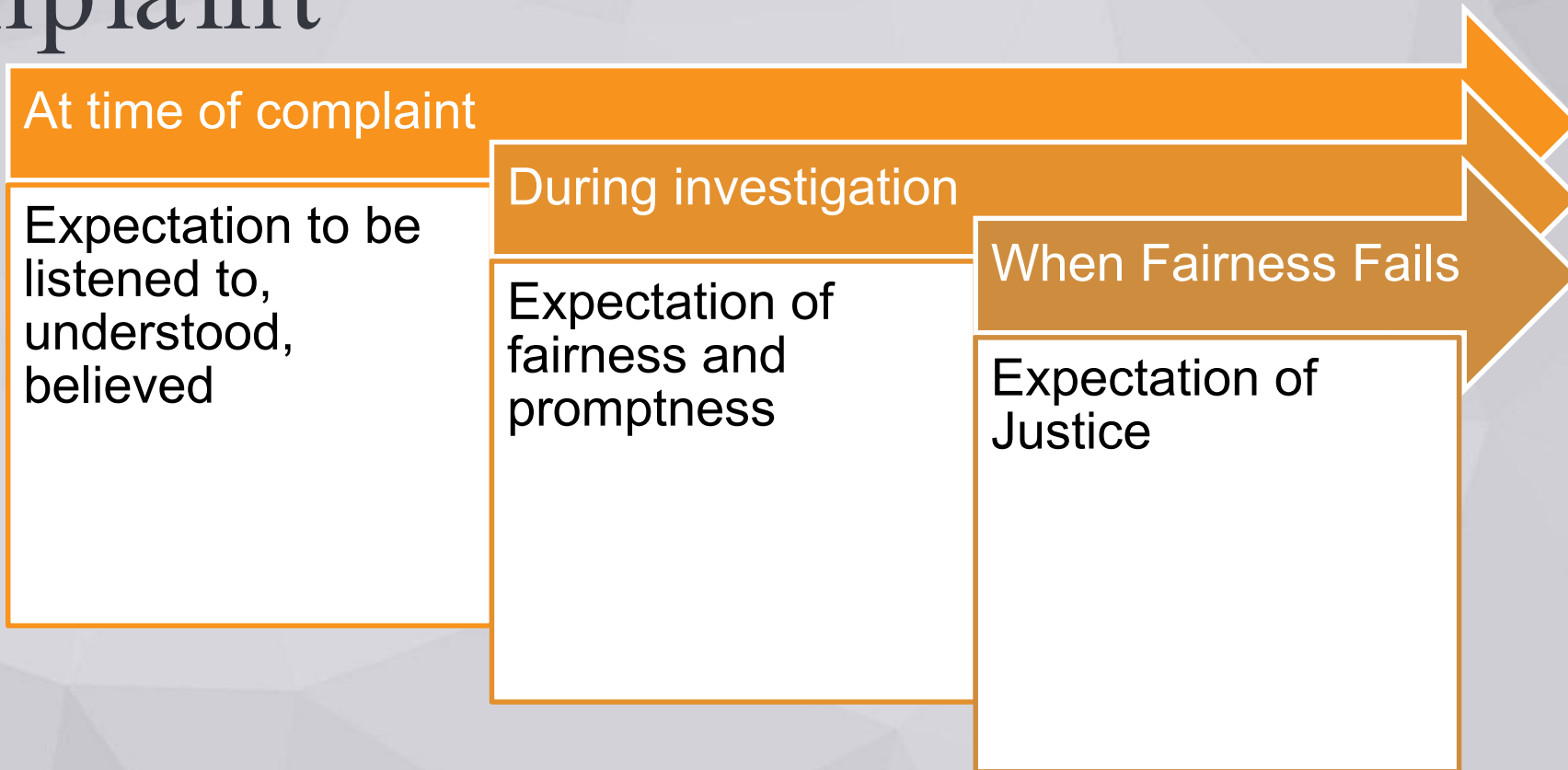


GIFT GETTING BEHAVIOR

- Thank You
- I appreciate it
- I know just what I'll do with it.



Organizational Trajectory of a Complaint



GOOD BETTER BEST

— Harassment Prevention/Respectful Workplace Policy —

SELF ASSESSMENT

Evaluate Current Practices

ESSENTIAL COMPONENTS OF YOUR POLICIES

Set an Expectation

Identify Prohibited Behavior

- Provide examples
- Identify consequences for violation

Provide Options for Addressing the Behavior

- Permission to object, with clarification not required
- Reporting Options including bypass
 - Anonymous
 - Identified

Identify Process When Complaint Received

- Investigation
 - Information resolution
 - Limits on confidentiality

ESSENTIAL COMPONENTS

part 2

Prohibition Against Retaliation

- Process for Reporting

Information That Will Be Available

DECISIONS TO MAKE

- Respectful Culture/Workplace/Organization v. Specific Harassment Policy
- Prohibit any Harassment/Prohibit Unlawful Harassment
- Detail and Extent of Enumeration
- Provide Separate Policy on Digital/Computer/Social Media or incorporate here?
- Reporting Resources
 - Specific Management
 - All Management
 - Trained Peer Resources
 - Third Party Reporting
 - Ombuds
- Identify External Options?

DECISIONS TO MAKE

- Encourage Objections or Offer as Neutral Option?
- Indicate Possible Outcomes of Reporting (i.e. interim actions) or note decisions made on case by case basis?
 - Offer mediation/conflict resolution option? Under what conditions?
- Identify steps in investigation or simply note investigation will be conducted?
- Describe limits on confidentiality- detail or general
- Affirm NLRB right to discuss terms and conditions of employment or omit?

WHAT MAKES A GOOD POLICY

It can be read and understood by your **least literate** audience

It is clear about the organization's expectations regarding interpersonal conduct

It provides realistic options for those with concerns and it is enforceable

It does not overpromise on process

It clearly prohibits retaliation

It matches the “body language” of the organization

WHAT MAKES A NOT SO GOOD POLICY?

It creates a hierarchy of unlawful behavior. Harassment based on any protected class is unlawful

It is not enforceable or infringes on organizational choices (i.e. “no hugging” policy)

It has restrictive language regarding reporting, rather than recognizing agency and choice

It articulates “zero tolerance.”

It promises that retaliation won't happen

Its overly legalistic, long, or lawyerly.

SAMPLE POLICIES: EVENT AND EMPLOYMENT

Inclusive of all misbehavior

SO, YOU'VE HAD A COMPLAINT

Procedures are
important

All supervisors and
managers should know
how to receive a
complaint and
document it.

HANDLING HARASSMENT COMPLAINTS

“Harassment 101”

SUPERVISORY COMPETENCIES

- Understanding Agency
- Three Essential Components
 - Knew or Should Have Know and
 - Took action that was
 - PROMPT
 - APPROPRIATE
 - EFFECTIVE



SUPERVISOR COMPETENCIES

Neutral Listening

Asking “Just Enough” Questions

Avoiding the Bad Questions

Documenting Properly

Maintaining Boundaries

Being a Process Support Person

Monitoring the Work Environment

Preventing Retaliation

NEVERS

Why is this just coming up now?

- (Variant) Why did you wait so long to say something?

What was your part in it?

Are you sure you didn't just misunderstand/misinterpret?

I've known...for a long time, and I can't imagine them doing or saying that.

Why do you think they did that to you?

ALWAYS

Thank you for bringing
this forward.

I'm glad you felt
comfortable talking to
me about it

Name feelings

We take these
concerns seriously

How is this affecting
you?

THE JOURNEY OF DISCLOSURE

My Side

The Facts

The Truth

DO YOU NEED TO INVESTIGATE?

• Yes if

- Disputed facts
- If allegations are true would be a violation of policy
- If complainant states ability to come to work or do job has been impaired
- If allegations are true organization would act

• No if

- If allegations are true individuals would be counselled to desist or other remedial, non disciplinary action would be taken
- No indication of history of same or similar
- No disputes about facts

TWELVE STEPS OF INVESTIGATION

1. Intake
2. Interim Actions
3. Form Your Team
4. Open File
5. Plan
6. Log Evidence
7. Preliminary Interviews
8. Update and Revise Plan
9. Interview Respondent
10. Follow Up Interviews
11. Credibility Assessment
12. Findings/Report

SUPERVISORS DURING INVESTIGATION

Temperature checks for all

Ensure interim actions effective

Maintain “need to know”

Avoid interfering with concerted activity, but set tone of professionalism

Intervene in any possible retaliation or reprisal

GOOD BETTER BEST

—— Training ——

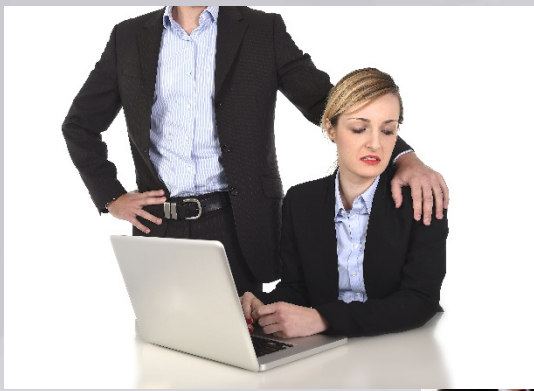
TRAINING HAS LIMITED UTILITY

Bumbler, non serial harasser: Effective

Inadvertent or ignorant serial harasser:
Effective sometimes

Intentional harasser non serial: Ineffective

Power based harasser: Ineffective



GOOD (COMPLIANCE)

Provide Legal Overview

Review Policy

Provide Examples of Prohibited Behavior

Discuss Process for Reporting

Answer Questions

Redistribute Policy

Unpleasant reality

- Statutes mandating sexual harassment training prescribe training that has been demonstrated to be ineffective in reducing harassment
In fact, it might exacerbate bias

Unlawful is for Lawyers



As a supervisor, your job is to deal with unprofessional, disruptive, damaging or potentially damaging interpersonal conduct



You do not need to first make a legal analysis

**BETTER =
GOOD PLUS...
(INTERACTIVE)**

Leadership Statement of Expectations

Discussion of Varied Problematic Behavior

- Rude and Uncivil
- Bullying (Abusive Behavior)
- Unlawful Harassment

Use Case Studies and Small Group Discussion

Explanation of Legal and Policy Prohibitions in context of organization

Explanation of Process to Address and Prohibition Against Reprisal

**BEST = BETTER
PLUS
(AFFIRMATIVE)**

Discussion and Exploration of Elements of Respect, Fairness and Safety

Discussion of “Cues” and microaffirmations/microaggressions

Discussion of Bystander Interventions or Actions

Case Studies

Discussion of Importance of Feedback

Practice Providing and Receiving Feedback

of thought or act
ple; an obscure a
bystander noun
by, who sees but
ing, an onlooker

We Need to
be Realistic
About
Bystander
Training

GOOD BETTER BEST

Best: Investing in A Community Covenant or Norms Statement

Why Develop A Community Standard?

Process, Product, Community

PROCESS

Opportunity for Community Conversations and Leadership “Walking the Talk” of Commitment

Enduring: A month is too little.

- Focus Groups
- “Climate Team” of Facilitators for Discussions
- Representation by All Constituencies

Anticipates Tools Needed (i.e. mediators, facilitators)

Explanation of Process to Address and Prohibition Against Reprisal

PRODUCT

Must be a living document

Must be woven into communications

- Articles in organizational newsletters
- From the Bimah
- Workshops, lectures, events

Integrated: Orientation, Opening Meetings

Refer to, but be separate from misconduct and protection policies.

Explanation of Process to Address and Prohibition Against Reprisal

Member/Lay Leader/ Board-Staff Covenant

- I will respect the time and effort a staff member contributes to our community and address issues to a staff member in an encouraging and positive manner. • I will respect the personal time of each staff member. • I will respect the boundaries of the staff member's job responsibilities. • I will communicate my need to a staff member directly, and understand that my personal needs may or may not be met. • I will discuss concerns about the responsibilities of a staff member, with that staff member. • I will not make any commitments on behalf of a staff member without their consent. • I will give the staff member adequate time to respond to my requests. • I will seek out opportunities to provide positive feedback to each staff member. • I will use "I" statements when speaking to staff members. • Because the staff supports our community, I will support the staff. • I will consider mediation as a means to address conflicts with a staff member

Questions and Discussion