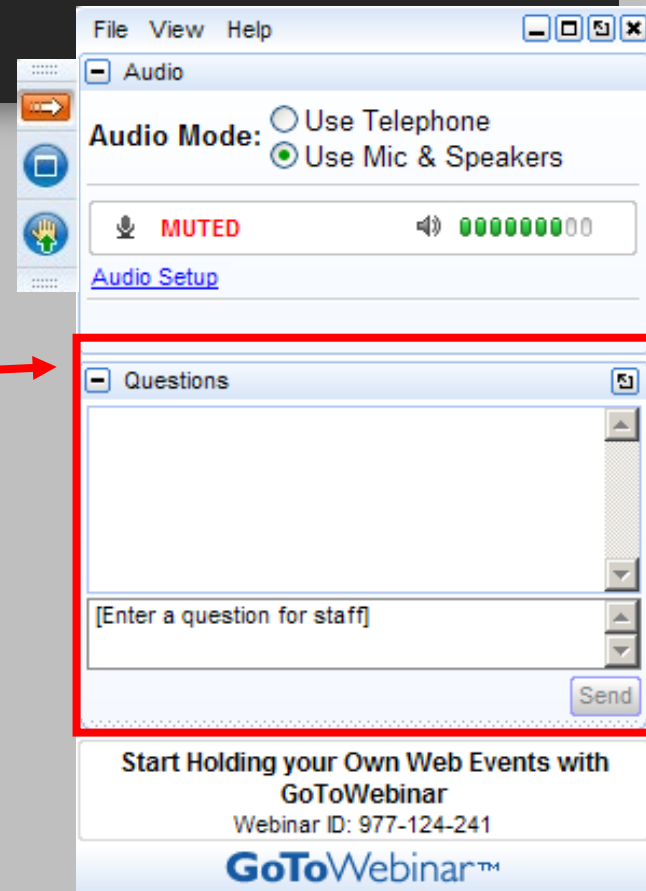


# Academy for Good Governance

## Preventing Discrimination, Retaliation and Workplace Hostility

# How to Participate Today

- Open and close your panel
- Submit text questions
- Q&A addressed during the session



*Thank You to Our Sponsors!*



# Today's Agenda

- The Reality
- The Impacts
- The Legal Framework
- Hostility
- Liability Concerns
- Leadership Perspective

# The Reality

- Values and expectations have changed
- Workplaces are more diverse
- Law and public policy have advanced
- Social and traditional media focus
- Leadership accountability expected
- Many adults still treat each other poorly

# The Reality

- The origin of employment litigation and liability is hostility, actual and/or perceived
- Costs for engaging in this behavior can be high
- Don't think that there's none in your workplace

# The Impacts

- ✓ Functional
- ✓ Financial
- ✓ Reputational
- ✓ Lost opportunity costs
- ✓ Personal
- ✓ Professional

# The Framework

## *Federal and State Law*

- Workplace discrimination is unlawful under various Federal and State laws, primarily:
  - Title VII of the Federal Civil Rights Act
  - NH RSA 354-A:7
  - ❖ Direct, Disparate Impact, Hostile Environment



# The Framework

## *Improper Motivation*

Discriminatory treatment is illegal when driven by animus toward a protected human characteristic:

- Sex
- Race
- Color
- National origin
- Religion
- Age
- Military or veteran status
- Physical or mental disability
- Marital status
- Pregnancy
- Sexual orientation
- Gender identity
- Any other characteristic protected by applicable law

# The Framework

## *Federal and State Law*

- Workplace harassment will constitute “unlawful discrimination” when it is improperly motivated and crosses certain thresholds.
- Legal standards governing harassment do not require niceness; however, meanness and intolerance moves one toward hostility, actual and/or perceived.

# The Framework

## ***The usual legal definition of sexual harassment:***

*Unwelcome sexual advances, requests for sexual favors, and other verbal or physical contact of a sexual nature constitute sexual harassment when:*

- 1) *Submitting to or rejecting this conduct:***
  - a) explicitly or implicitly affects an individual's employment; or*
  - b) is used as the basis for employment decisions affecting the individual who submits to or rejects such conduct; or . . .*
  
- 2) *Such conduct has the purpose or effect of unreasonably interfering with individual work performance or creating an intimidating, hostile or offensive working environment.***

# The Framework

## *Hostile Workplace —*

- **Workers perceive hostility in a human sense**
- **They may feel hostility relates to a protected characteristic when factors suggest a lack of respect for the specific characteristic or a general intolerance of diversity**

# Workplace Hostility - Risk Factors

- Bias or intolerance
- Anger/Frustration
- Non-Constructive Criticism
- Offensive Jokes
- Rumoring
- Ostracizing
- Unfair process
- Poor ethics
- Retaliatory conduct
- Displaying dislike
- Abusing positional or social power
- Generating mistrust
- Conveying lack of care
- Lack of Professionalism

# Sexual Hostility - Specific Examples

- Direct sexual advances
- Touching, patting, pinching
- Sexually explicit gestures
- Ogling, leering and physical gestures conveying a visual meaning
- Graphic comments about an employee's body
- Sexually suggestive objects or pictures in the workplace
- Repeated dirty jokes
- Sexually degrading words used to describe an employee
- Derogatory or sexually explicit statements about an employee's actual and supposed sexual relationships
- Other sexually related behavior
- Observation

# When Does Hostility Become Illegal?

*If it's improperly motivated, additional factors become relevant:*

- Frequency of Conduct
- Its Severity
  - ✓ Physical threat or humiliation vs. “merely offensive” (Is that acceptable?)
- Interference with Workers’ Performance
- Power of the Actor and Recipient
- Unintended Victim
- Location and Time:
  - ✓ Need not be just in the “workplace” or during working hours

# Hostility - Retaliation

Retaliation means any form of conduct that would dissuade a reasonable person from reporting or complaining of harassment or assisting in its investigation.

Retaliation is a separate offense under the law and may exist even if an underlying charge of harassment is found not to exist.

## **The Bottom Line:**

Do not retaliate in any way!



# Hostility - Bystanders

- Recognize Your Potential Biases
- Refuse Complicity
- Speak Up or Redirect
- Extract
- Support
- Analyze
- Reflect and Seek Advice
- Report discriminatory hostility

# Hostility - Important Questions

- Do we need any hostility in our workplaces?
- Does it undermine trust and effectiveness?
- Is the damage easy to repair?
- Are we always skilled at seeing when we might be contributing to hostility?
- Is it easy or difficult to avoid hostility?
- If we eliminate/minimize hostility in the workplace, what are the upside implications?

# Liability Concerns

- Organizational liability
- Supervisory liability
- Personal liability
- Criminal liability
- Investigation, legal and insurance costs

# Leadership Perspective

## Practical Tips:

- ✓ Prioritize a healthy workplace culture
- ✓ Factor employee morale and trust into all workplace policies and practices
- ✓ Hire supervisors and employees who model patience, empathy and professional behavior
- ✓ Update your policies against illegal workplace discrimination if they are stale
- ✓ Develop a workplace professionalism policy
- ✓ Training

# Leadership Perspective

- ✓ Seek legal consultation before any terminations
- ✓ Take complaints seriously & seek legal advice
- ✓ Don't decline to investigate because of cost
- ✓ Use progressive, proportionate discipline, even-handedly
- ✓ Develop a way to monitor, identify, assess and triage workplace conflict at earliest stages
- ✓ Act as a Board not an individual

# Leadership Perspective

- Think hard about the concepts of bias and hostility; they are wide-ranging
- Don't condone intolerance and abuse
- Actively prevent mistreatment of others
- Compassion is vastly more powerful than hate
- Leaders need to exhibit these ideals if they want trust, respect and allegiance
- Employees are watching and reacting
- Set the tone and lead by example

# Q&A

- Any remaining questions?
- Please feel free to reach out to me if you have a question in the days and weeks ahead.  
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THANK YOU! We greatly appreciate your time, participation and interest, and wish you all success in your leadership roles.