

# Sexual Harassment Prevention Training

**Association of Levee Boards of Louisiana  
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# EEO OVERVIEW

## *PRIMARY STATUTES:*

- **Title VII of the Civil Rights Act of 1964**
- **Age Discrimination in Employment Act of 1967**
- **Americans with Disabilities Act of 1990**
- **Louisiana Employment Discrimination Law**

# EEO OVERVIEW

## ***GENERAL PROHIBITIONS:***

- **Failure or refusal to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin, age or disability.**
- **Limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, national origin, age or disability.**

# EEO OVERVIEW

## **LIABILITY:**

- **Back pay and benefits**
- **Reinstatement**
- **Front pay**
- **Attorney's fees, expert fees and other litigation costs**
- **Compensatory and punitive damages**

## **JURY TRIALS:**

# EEO OVERVIEW

## ***PROTECTED CLASSES:***

- **Race**
- **Color**
- **Religion**
- **Sex**
- **National origin**
- **Age**
- **Disability**
- **State law: same classes are protected, plus other classes**

# EEO OVERVIEW

## *EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC):*

- **Investigative and enforcement**
- **Issues guidelines and regulations**

# SEXUAL HARASSMENT

## *Quid Pro Quo*

- **unwelcome sexual advances**
- **requests for sexual favors**
- **other verbal/physical conduct of sexual nature**

## **TIED TO:**

- **term or condition of employment**
- **particular employment decision**

# SEXUAL HARASSMENT

## *Hostile Work Environment*

- **unwelcome sexual conduct, and**
- **interference with employee work performance, or**
- **creating intimidating, hostile or offensive working environment**

### **MUST BE:**

- **based upon sex**
- **severe / pervasive**



# SEXUAL HARASSMENT

## *What Constitutes Sexual Harassment?*

- **Hard to define**
- **Victim could be male or female**
- **Not limited to male/female interactions**
- **Frequency/severity**
- **Isolated instances**

# SEXUAL HARASSMENT

## *Latest Developments:*

- ***Faragher v. City of Boca Raton*** (supervisor harassment)
  - classic hostile environment case
- ***Burlington Industries, Inc. v. Ellerth*** (supervisor harassment)
  - classic *quid pro quo* case

# SEXUAL HARASSMENT

*Tangible Employment Action = Strict Liability*

**What Constitutes a Tangible Employment Action?**

- **An action by a supervisor which becomes an action by the employer**
- **Significant change in employment status**
- **Usually involves direct economic harm**

# SEXUAL HARASSMENT

*Tangible Employment Action = Strict Liability  
(continued)*

- **Examples:**
  - **hiring**
  - **firing**
  - **failing to promote**
  - **reassignment with significantly different responsibilities**
  - **significant change in benefits**

# SEXUAL HARASSMENT

*No Tangible Employment Action = Defense to Liability*

**Employer Defense:**

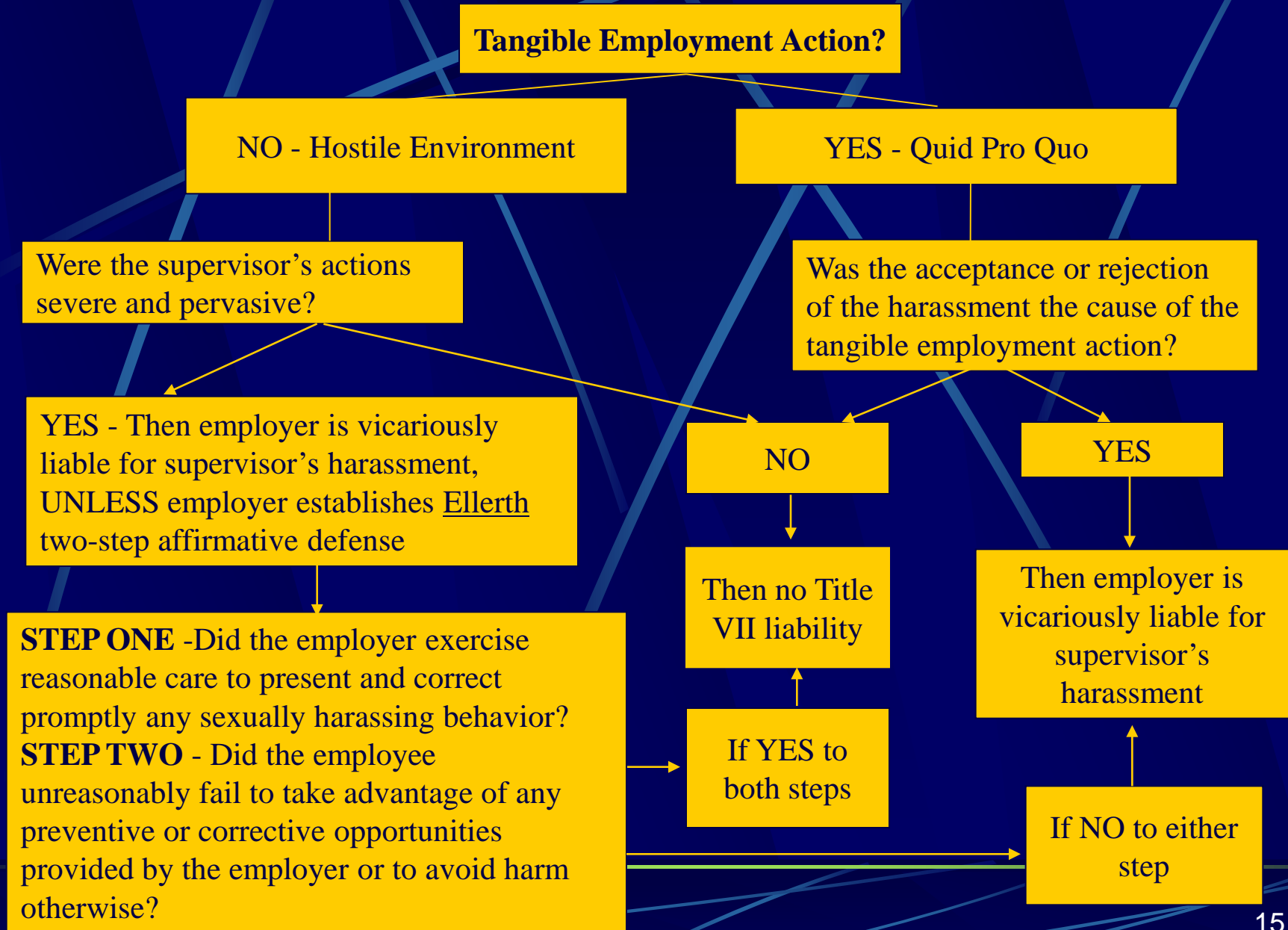
- (1) Employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior**
  - **Policy**
  - **Investigation**
  - **Remedial Action**

# SEXUAL HARASSMENT

*No Tangible Employment Action = Defense to Liability (continued)*

- (2) Employee unreasonably failed to take advantage of preventive or corrective opportunities provided by employer or to avoid harm otherwise.
- Failure to report harassment
  - Failure to follow remedial measures

# SUPERVISOR SEXUAL HARASSMENT ROADMAP



# SEXUAL HARASSMENT

## What Should I Do?

### *1. What Should I Do If I See Sexual Harassment?*

- **Tell the harasser to immediately stop his/her behavior**
- **Tell the harasser that the company does not tolerate or condone sexual harassment**
- **If possible, separate the harasser and the victim**

**IMMEDIATELY REPORT IT TO THE APPROPRIATE PERSON IN MANAGEMENT!**



# SEXUAL HARASSMENT

## What Should I Do?

### 2. *What Should I Do If I Receive a Complaint of Sexual Harassment?*

- Inform the alleged harasser that the company does not tolerate or condone sexual harassment
- Inform the alleged harasser that the company takes complaints of sexual harassment very seriously
- Inform the alleged harasser that the company will immediately investigate the matter

**IMMEDIATELY REPORT IT TO THE APPROPRIATE PERSON IN MANAGEMENT!**

# OTHER FORMS OF HARASSMENT

- **Covers any protected class:**
  - race**
  - color**
  - religion**
  - national origin**
  - age**
  - disability**
- **Same rules apply**

# HARASSMENT DO'S AND DON'TS

- Do's:

- **DO take all complaints seriously**
- **DO report all complaints to the appropriate person in management immediately**
- **DO complete an incident report shortly after receiving a complaint**

# HARASSMENT DO'S AND DON'TS

## ● Do's:

- **DO investigate the complaint fully in as confidential a manner as possible**
- **DO make certain all employees have received written non-discrimination and harassment policies and procedures**
  - **employee handbook**

# HARASSMENT DO'S AND DON'TS

- **Do's:**

- **DO remind employees that the company does not tolerate or condone harassment**
  - **periodic meetings**
- **DO follow company policies and procedures and apply them consistently and uniformly**

# HARASSMENT DO'S AND DON'TS

- Don'ts:

- **DON'T trivialize employee complaints**
- **DON'T attempt to “work out” harassment complaints on your own**
  - **Regardless of the severity of the complaint, report it to the appropriate person in management immediately**

# HARASSMENT DO'S AND DON'TS

- *Don'ts:*

- **DON'T engage the complainant in lengthy discussions regarding the complaint**
  - **Misperceptions about supervisor comments**
- **DON'T sit on a complaint hoping that it will simply blow over**

# HARASSMENT DO'S AND DON'TS

- *Don'ts:*

- **DON'T retaliate against a complainant**



# WRITTEN SEXUAL HARASSMENT POLICY

- **Statement that sexual harassment is against the law and against company policy**
- **Disciplinary action**
- **Examples of sexual harassment**

# WRITTEN SEXUAL HARASSMENT POLICY

- **Complaint procedure**
- **Appropriate company officials to receive and investigate complaints**

# RETALIATION

- **Federal Law**

- **Title VII**
- **ADEA**
- **ADA**
- **FMLA**
- **Others**

- **State Law**

- **Construed like federal law**

# RETALIATION

- **Applies to:**
  - **Applicants for employment**
  - **Current employees**
  - **Former employees**

# RETALIATION

## (1) *“Protected Activity”*

Opposing unlawful employment practices

- Discrimination
- Harassment

Filing charge or complaint of discrimination or harassment

# RETALIATION

## (1) *“Protected Activity” (continued)*

Participating in investigation, proceeding, hearing or litigation

- Testifying
- Assisting
- Voluntary
- Involuntary

# RETALIATION

## (2) *“Adverse Employment Action”*

- **Materially adverse change in the terms and conditions of employment**
- **Would a reasonable employee have found the challenged action materially adverse (*i.e.*, would the challenged action have dissuaded an employee from engaging in the protected activity)**

# RETALIATION

## (2) *“Adverse Employment Action” (continued)*

- What MAY be an Adverse Employment Action?
  - Firing
  - Demoting
  - Placing on leave
  - Reducing compensation



# RETALIATION

## (2) *“Adverse Employment Action” (continued)*

- What could possibly NOT be an Adverse Employment Action?
  - Lateral transfers?
  - Changing insignificant job responsibilities?
  - Changing work schedule?
  - Hostility?

# RETALIATION

## (2) *“Adverse Employment Action” (continued)*

- What could possibly NOT be an Adverse Employment Action? (continued)
  - Reprimands?
  - Disciplinary filings?
  - Job evaluations?
  - Denial of perks?

# RETALIATION

## (3) *“Causal Connection”*

- **“but for” causation**
- **timing**
  - **short duration**
  - **long duration**
- **decision-maker’s knowledge**
- **severity of action**

THE END