

Rule 27 & Respectful Workplace Culture

Bor Yang

Legislative Equity Officer



Agenda

- The Legislative Equity Office
- Understanding The Training Requirement
- What is Harassment, Discrimination, Retaliation?
- Filing a Complaint Under Rule 27 and The Respectful Workplace Culture Policy



The Legislative Equity Office

- Created by statute (ORS 173.909 et seq.)
- Independent office within the Legislature
- Oversees Rule 27 investigations
- Resource for process counseling/coaching/trainings
- Interim complaint process
 - LEO provides process counseling
 - Contract attorneys conduct investigations

LEO

Meeting the Training Requirement

Annual Training Requirement:

- Statutory Requirement
- Members, staff, interns, externs, volunteers, contractors, lobbyists
- Must attend minimum of two hours training annually
- In-person / online training is last resort
- Can take training via online format only 1x in any given two-year period unless out of state.
- Small groups

The Legislative Assembly's Policies

Respectful Workplace Policy

- To provide a workplace that is safe, respectful, professional and free of inappropriate and disrespectful behavior.
- Disrespectful behavior is not based on a person's protected class status.
- Investigated by Employee Services (Human Resources).

Rule 27

- To eradicate harassment, discrimination and retaliation in the General Assembly.
- Governs behaviors and adverse actions that occur because of someone's membership in a protected class.
- Investigated by LEO and/or contractor.

How Prevalent is Workplace Bullying?

A 2017 survey by the Workplace Bullying Institute revealed:

- 19% of Americans have experienced workplace bullying.
- 19% have witnessed workplace bullying.
- 63% are aware that workplace bullying occurs.
- 61% of bullies are bosses.

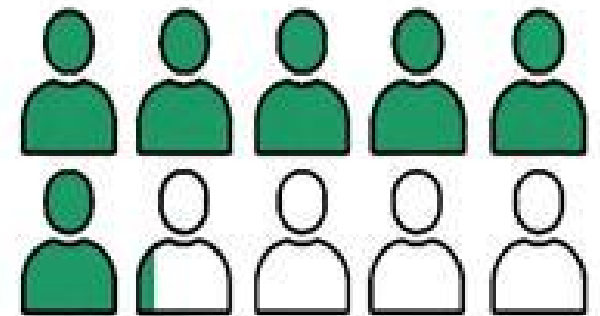
It is far more common for the targeted person to leave employment, either through termination, resignation, or constructive discharge, than for the bully to be terminated.

Why?

How Prevalent is Racial Harassment?

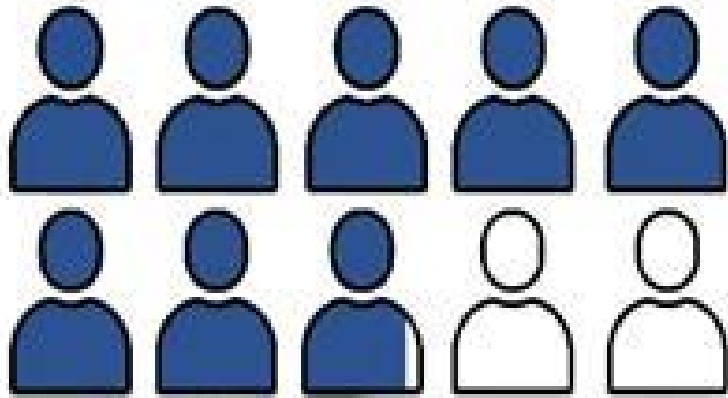
- The prevalence of workplace discrimination ranged from a high of 25% for Black women to a low of 11% for White men.
- Black workers reported a 60% higher rate of discrimination compared to White workers;
- Women reported a 53% higher prevalence of discrimination, compared with men.
- Between FY 2018 and FY 2021, the EEOC received a total of 98,411 charges alleging harassment under any basis.

62.2 % of all harassment
charges were filed by
women



How Prevalent is Sexual Harassment?

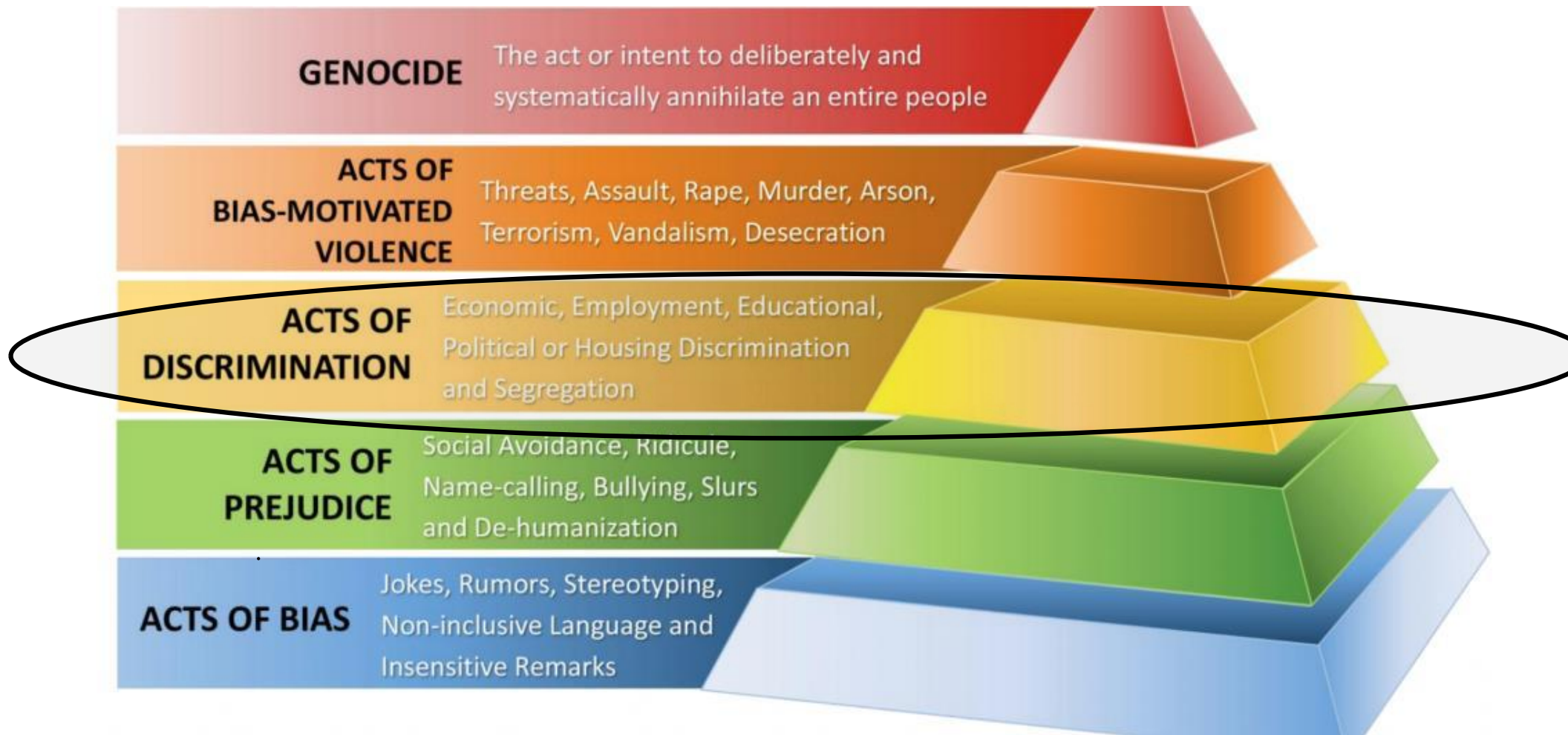
78.2 % of sexual harassment charges were filed by women



- 81% of women and 43 % of men had experienced some form of sexual harassment or sexual assault during their lifetime.
- Most people first experience sexual harassment early in life during preteen or teenage years.
- Between FY18 and FY21, the EEOC received a total of 27,291 charges alleging sexual harassment.
- Sexual harassment charges received by the EEOC in the two years following #MeToo, increased by 13.6%.
- Why?

The Spectrum of Bad Behavior

Incivility →	Offensive and Harmful Behavior →	Unlawful Behavior →
Silent treatment	Bullying	Threats
Eye-rolling	Taunting	Racial and Ethnic Slurs
Gossiping	Damaging reputation	Sexual Comments
Back-stabbing	Undermining work	Physical violence
Put-downs	Sabotaging a project	Sexual Assault
Public reprimands	Public humiliation	Pervasive offensive and harmful behavior that is based on a protective status.
Losing temper	Verbal Abuse	Disparate treatment in terms and conditions of employment
Sarcasm	Encouraging others to turn against coworkers	Failure to hire, promote, etc. on the basis of protected status.



Inappropriate Behavior

Examples:

- Shout at someone in a meeting and demean their intelligence in front of others.
- Start or perpetuate rumors/gossip that you know to be false or harmful.
- Share information known about someone with the intent to embarrass, humiliate or demean.
- Text, direct message or otherwise use technology to communicate insults or demeaning language to a colleague, co-worker or lobbyist.
- Post on a social media site insulting or derogatory language about someone who is subject to the protections of this policy.



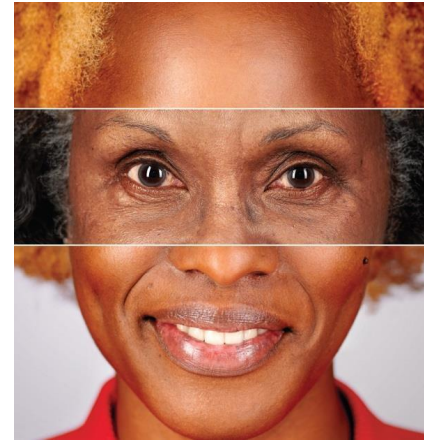
Inappropriate Behavior is not...

- A supervisor providing expectations or imposing disciplinary action.
- A co-worker pointing out an error
- Disagreement over the legislative agenda, a bill or policy in committee or on the floor.
- Interrupting a conversation or line of questions.
- Not permitting all members to ask all of their questions before moving on.
- Setting a specific legislative agenda that might exclude important issues.

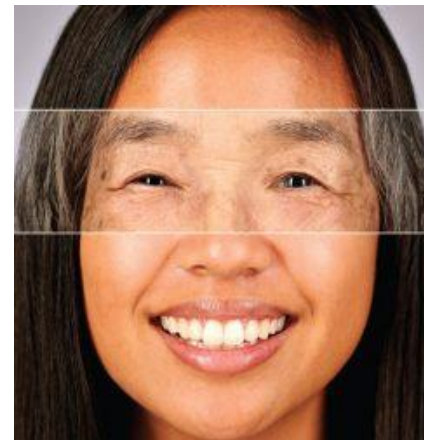
But what happens when the legislative agenda excludes very specific issues relating to a protected class? What happens when the Chair continuously interrupts female witnesses? And what if the Chair is unaware that they're doing this?

Microaggressions

The brief and commonplace statements or behaviors that, intentionally or unintentionally communicate a negative message about a non-dominant group. It's not always obvious. It can be ambivalent or have multiple meanings. It can be well-intentioned.



**CREATIVITY
NEVER
GETS OLD.**



**INTELLIGENCE
NEVER
GETS OLD.**

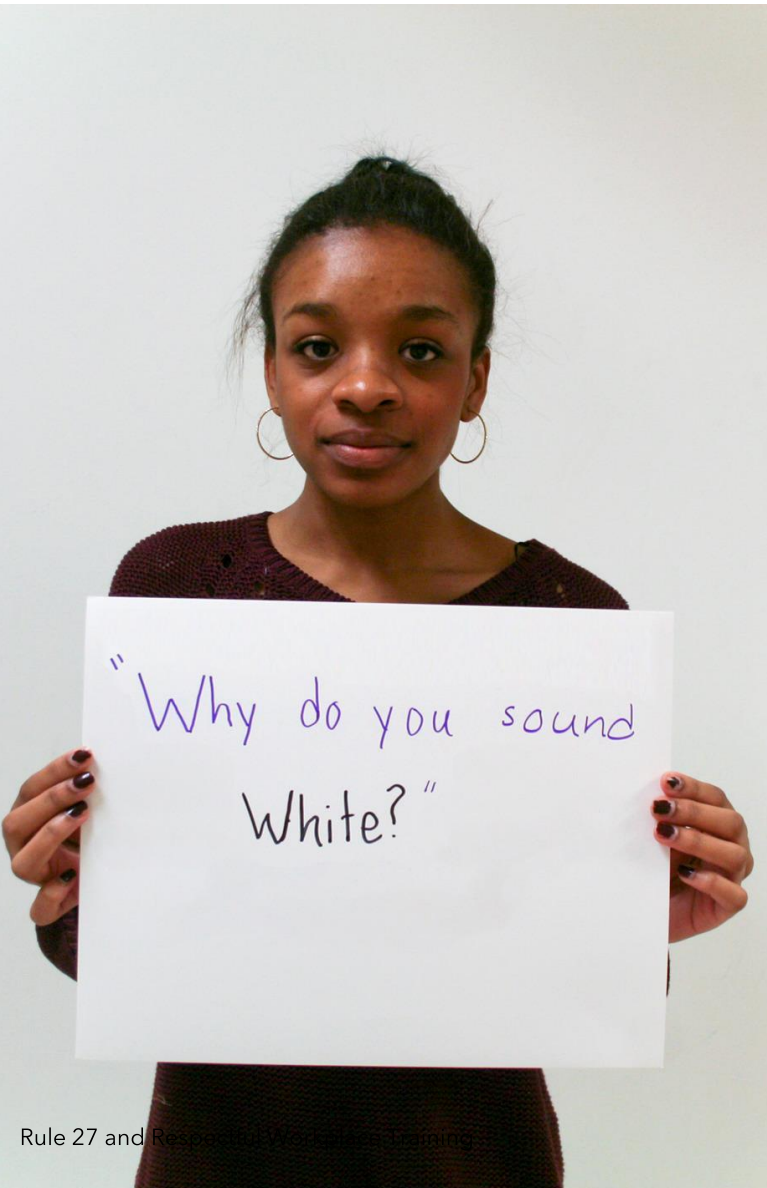
Examples

Can you think of any?

- Where are you really from?
- Your English is so good.
- You're so articulate.
- You should smile more.
- That's not very ladylike.
- Permitting male lobbyists to speak uninterrupted but not female lobbyists.
- Turning to the male in the room for the answer.
- Asking a same sex couple, "who's the man in the relationship?"
- Praising a person with a disability for doing nothing or very little.

Microaggressions vs. Everyday rudeness

- constant and continual.
- cumulative in nature and represent a lifelong burden of stress.
- continuous reminders of the target group's second-class status in society, and symbolic of past governmental injustices.



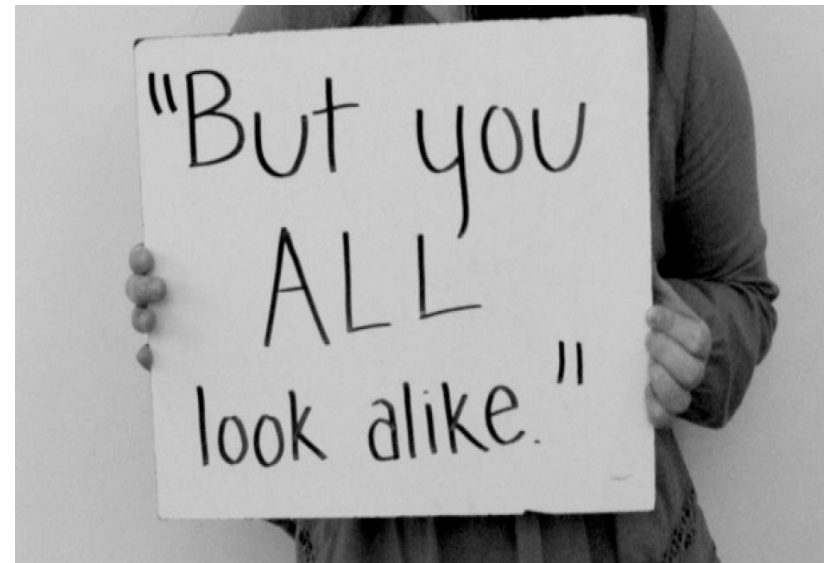
How Do You Know it's a Microaggression?

You may not know. It's hard.

Perspicacity - the quality of having a ready insight into things. You must be able to see beyond the obvious, to deconstruct communication and decipher double meanings.

Trust the person who is on the receiving end.

Having no experience does not equate to being neutral or objective.





Microaggressions → Harassment

Harassment Defined

Unwelcome behavior that targets someone on the basis of their protected status.

Interferes with work performance or creates an intimidating, hostile or offensive work environment.

15 Protected Classes

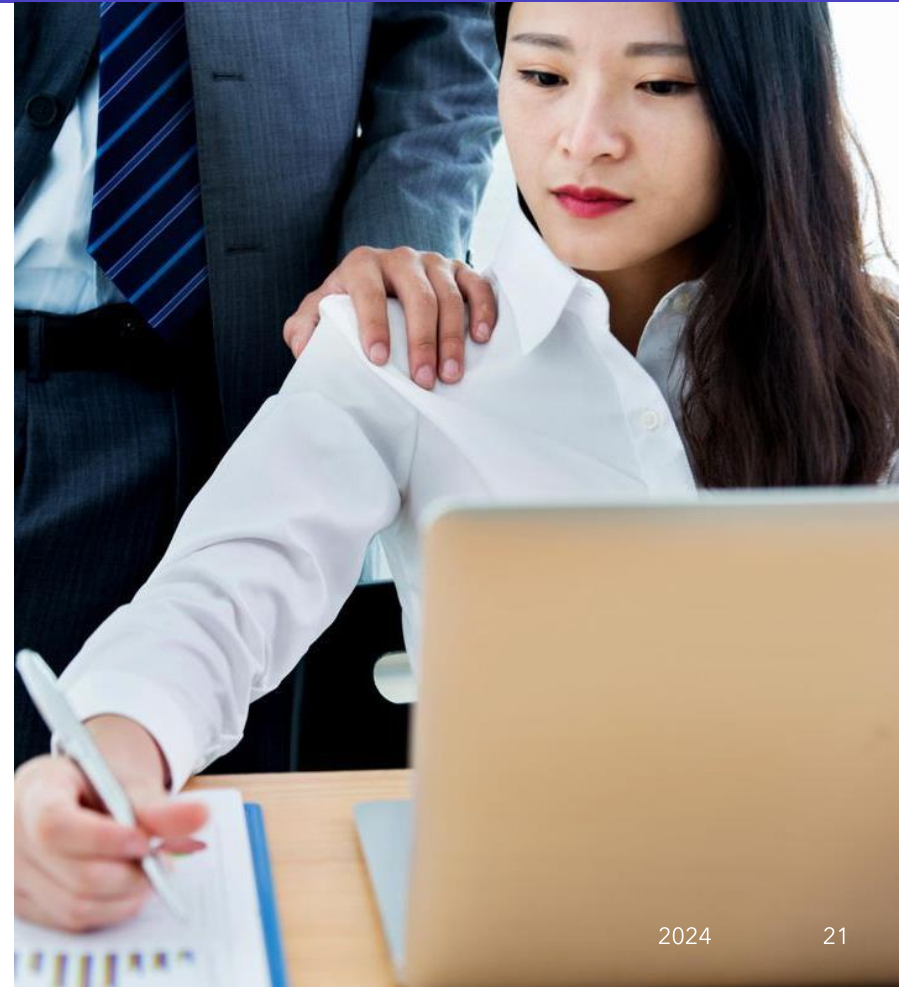
Sex	Race	Ethnicity	Age	National origin
Religion	Marital Status	Sexual orientation	Gender identity or expression	Engaging in whistleblowing activity
Opposing employer's actions when believed to be unlawful	Taking Leave	Injured Worker's Status	Disability	Veteran Status

Who is Protected?

- Everyone has the right to work in a discrimination-free, harassment-free, retaliation-free workplace.
- A hostile work environment can be objectively hostile for any person subjected to it.
- You can be “subjected” to harassment without being the target of the harassment.

Who can be the harasser?

- Supervisors
- Coworkers
- Lobbyists
- Staffers
- Members
- Public



Sexual Harassment

Sexual Harassment takes two forms:

1. Quid Pro Quo
2. Hostile Work Environment

Quid Pro Quo

Quid Pro Quo, meaning "this for that" in Latin: When submission to the conduct is made a term or condition of employment. *Quid pro quo* harassment also occurs when an employee's reaction to a sexual advance negatively affects his employment.

Can be expressed:

"Go out with me and I'll reconsider my position on the bill"

or implied:

"I'm sorry we ran out of time in committee but let's go out tonight and you'll have my full attention."

Hostile Work Environment

Hostile Work Environment is created when comments, behavior or actions create an environment that is hostile, objectively abusive and interferes with one's ability to do the job.

It is:

1. Unwelcomed (unsolicited, undesirable, withdraws consent);
2. Affects ability to function or denies some benefits in the workplace. An employee can demonstrate harassment even if he has suffered no loss of tangible job benefits; and
3. Severe or pervasive.

Motive is Irrelevant



Sexual harassment does not require sexual attraction!

Sexual harassment is unlawful even if it is not motivated by sexual desire.

The laws and policies govern harassment of the same or opposite sex.

Location is Irrelevant

“Workplace” is not limited to what happens within a physical building but also:

- Work trips

- Conferences

- Virtual Meetings

- Emails and social media communications

- Legislative activities offsite

- Any place having a nexus to legislative work or activities

Method is Irrelevant

Verbal - Jokes, demeaning language, questions or comments about someone's hair, body, etc.

Physical - Unwelcome touching of any kind no matter how seemingly insignificant; sexualized horseplay, obscene gestures, assault, impeding or blocking movement. leering, making sexual gestures, sexual assault.

Written - notes, letters, emails or Facebook posts, tweets.

Visual - magazines, internet, sexting, photos, calendars, displaying suggestive objects or pictures, cartoons, or posters.

Auditory - phone calls, phone messages.

All encompassing

Unwelcome conduct of a sexual nature, including but not limited to:

1. Sexual advances or persistent unwanted courting
2. Requests for sexual favors
3. Sexual comment, innuendos, jokes, insults, sexually charged language.
4. Unwanted or offensive touching or physical contact
5. Unwanted closeness
6. Impeding or blocking movement
7. Sexual gesture
8. Intimate inquiry
9. Comments regarding a woman's body, a man's sexual prowess, a transgender person's physical changes, etc.
10. Other verbal or physical conduct of a sexual nature.

On the Basis of Race

- Name calling, slurs, or stereotyping
- Insensitive comments about slavery and other historical atrocities
- Mocking someone's accent.
- Displaying written or graphic materials
- Violations of consent and personal space, such as when a White person touches a Black person's hair without consent
- Images or conduct that offend, objectify, or belittle certain racial or ethnic groups or people from certain countries
- Acts and behaviors which represent cultural appropriation
- Assumptions made based on one's appearance, hairstyle, attire, or body size

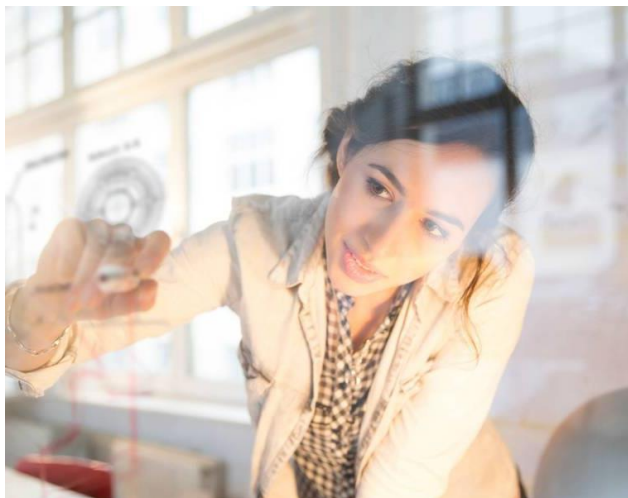
On the Basis of Gender Identity or Sexual Orientation

- Homophobic remarks, insults, or name-calling
- Unwelcome questions, inquiries, or conversation about someone's sexual preference
- Deliberate misgendering or repeated use of incorrect pronouns
- Anti-transgender remarks or slurs, such as referring to a transgender person as a cross-dresser, transvestite or other inappropriate and/or derogatory term
- Unwelcome questions, inquiries, or conversation about another person's genitals, sex assigned at birth, gender reassignment surgery, use of hormone therapy, or related matters
- "Outing" someone (revealing their sexual orientation, transgender identity, or other private sexual information) in the workplace without their consent

Intersectionality

People have individual identities that intersect in ways that impact how they are viewed, understood and treated in the world.

Analyzing harassment on the basis of each separate protected class hurts people who have intersecting identities. We must look at the totality of circumstances and the entire picture to determine if harassment has occurred.



DISCRIMINATION

Harassment is one form of Discrimination;
Discrimination also includes

- Failure to Hire
- Failure to Promote
- Failure to Accommodate
- Equal Pay Violations
- Unlawful Termination or Demotion
- Disparate Treatment in terms & conditions of employment.

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Unintentional Discrimination

- Equal Pay
- Failure to accommodate:
 - Pregnancy
 - Religious beliefs
 - Disability
- Disparate Impact

Intentional Discrimination

Intentional discrimination requires a showing that an adverse action occurred “because of” someone’s membership in a protected class. It does not require malice or evil intent. How do you prove someone’s intent?

1. Direct Evidence

“ I need to hire someone the guys will trust and can be themselves around.”

“ I think someone who speaks more English would be a better fit.”

“ I support people with disabilities being in the workplace but it shouldn’t cost us more for him to do the work. That’s not fair to us.”

2. Indirect Evidence

Comparator Analysis

Markedly Hostile - Inference

What if the action is motivated by implicit/unconscious bias?

Retaliation Prohibited

Rule 27 protects anyone who has filed a complaint or participated as a witness in a Rule 27 investigation.

Oregon Law protects the employee as well as any witnesses, who:

- opposed an act or practice that is prohibited such as discrimination and harassment;
- lodged a complaint or testified, assisted, or participated in an investigation of prohibited acts or practices;
- is known by the employer to be about to do any of the above; or
- is believed by the employer to have acted as described above

Employees and witnesses are protected from retaliation even if the original claim of discrimination or harassment fails, turns out to be false or is otherwise inaccurate.

Examples of Retaliatory Acts



Retaliation is not just termination. It may include:

- Changes in terms or conditions – office space, leave requests, benefits, etc.
- Failure or refusal to promote
- Demotion or suspension
- Poor evaluation
- Exclusion from meetings or decision-making.
- Assigning less desirable projects
- Revealing confidential or private information about someone.



Disrespectful Behavior Harassment Discrimination Retaliation

What Do I Do?

Reporting

- **Conduct complaint** - Write down your complaint in your own words.
- **Conduct report** - Tell the LEO, Employee Services or an investigator that you'd like to make a report.
- **Confidential report** - Tell the LEO that you would like to make a confidential report.
 - Threat of sexual assault
 - Litigation
 - Non-personally identifiable information to facilitate training

Confidentiality in Process Counseling

Process Counseling: Providing information on legislative branch personnel rules, policies and processes and providing information regarding confidentiality.

You can reach out with concerns or questions knowing:

- Any limitations to confidentiality will be disclosed to you before you choose to share information.
- You choose what is shared (and what is not) during the Rule 27 process.
- You can ask that personally identifiable records not be made.
- You can ask hypothetical questions.

Confidentiality in Hearing

There are ways to maintain levels of confidentiality in a hearing process:

- Redaction of private information such as protected class status, medical information, etc.
- Participating in oral testimony without providing your name and without turning on your camera.
- Having a proxy or third-party person read written testimony that you've prepared.

Who Must Report?



- An appointing authority, including any member of the Legislative Assembly
- Nonpartisan staff supervisor
- Legislative Branch contractor, or an employee of a contractor
- You, as the person who experienced the conduct, have an opportunity to make a confidential disclosure

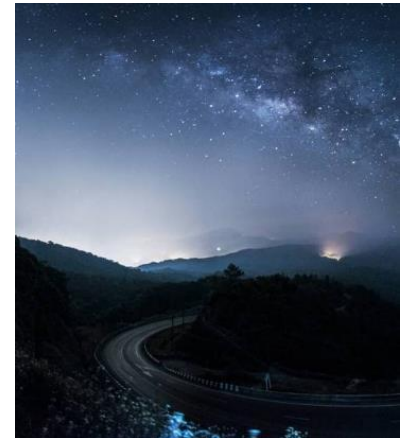
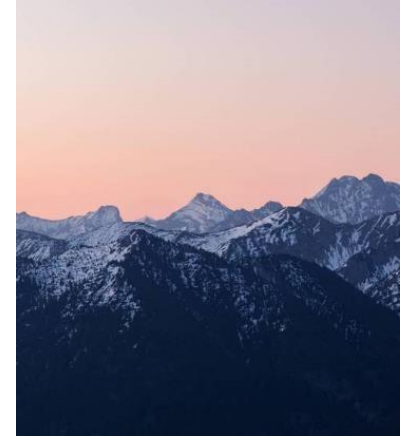
Duties of Supervisors and Appointing Authorities

If a supervisor or appointing authority knows of or sees behavior that violates this policy, they must take immediate action by either

- Addressing behavior directly through coaching, counseling and appropriately document action with LEO;
- Consulting with Employee Services to determine appropriate next steps and appropriately document action with LEO; **or**
- Reporting conduct to Employee Services

Why Report?

- Negative impact on health
- Increased inter-office/workplace conflict
- Increased bad, unsafe and/or illegal behavior in the workplace
- Negative impact on overall work output
- Other occupational stress, job withdrawal, mental stresses
- Losing coworkers that you care about
- Perpetuating racism, sexism and an unsafe workplace
- Reporting can facilitate change
 - Safety measures for the individual
 - Better coaching and training for others
 - Legal changes that impact future employees



What Can You Do Other than Report?

Remember that you don't have to be the target of the harassment to speak up.

- White people can demonstrate zero tolerance for racial slurs that do not target them.
- Men can disapprove of sexual innuendos and jokes about women in the workplace.
- Straight, cisgender people can speak out against homophobic and transphobic remarks.

Standing with someone vs. Standing up for someone

The window of opportunity is actually longer than you think.

You can address the other people in the room.

How?

FIRST, CONSIDER:

When and How

Public? Private? In person? Email?

Adjust your response as the situation warrants.

If it's ignorance, then consider educating.

Be aware of relationship factors and dynamics.

How?

SECOND, AFFIRM

Why do we affirm?

- (a) validation of their experiential reality
- (b) value as a person
- (c) affirmation of their racial or group identity
- (d) support and encouragement, and
- (e) reassurance that they are not alone.

How?

"Are you ok?"

"I was stunned."

"What was that all about? I'm so sorry."

How?

THIRD, INTERVENE

Undermine the Statement → *That's not my experience*

Seek Clarification → *That sounded "off." What did you mean by that?*

Challenge and Disagree → *I think that belief is too narrow minded. Have you considered...?*

That made me uncomfortable

I don't really want to hear that.



**Contact us at the Legislative
Equity Office:**

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Thank you

Rule 27 and Respectful Workplace Training



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