



Creating and
Maintaining a
Respectful Workplace



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- *Presented March 19, 2021 & recorded to meet Respectful Workplace requirements for all agencies*

Protected Classes

Title VII of the Civil Rights Act of 1964- Equal Employment Opportunity Commission (EEOC)

Age (40+)

Color

Disability

Genetic Information

National Origin

Race

Religion

Veteran's Preference

Sex (including pregnancy)



Legal Definition of Harassment

SEVERE OR PERVASIVE



- Unwelcome or unwanted sexual advances, requests or demands for sexual favors, or other conduct based on a protected status when:
- Submission to such conduct is made explicitly or implicitly a term or condition of employment; or
- Submission or rejection of such conduct is used as the basis for employment decisions; or
- Such conduct has the purpose OR effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

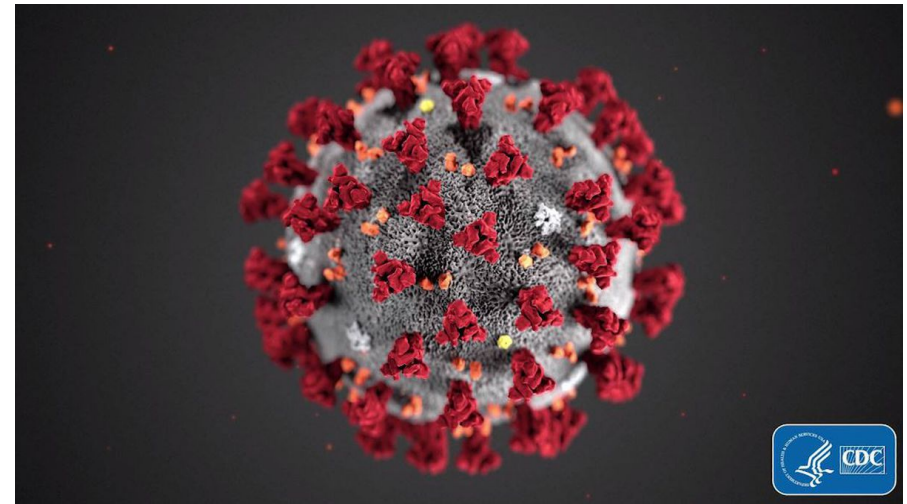


Harassment and discrimination all apply to the current COVID-19 situation. In uncertain times, fear and anxiety can cause us to forget that we are still dealing with confidential information that is not to be shared or used against a person.

COVID-19

Respectful Workplace and COVID-19

- Disparaging comments
- Learn to read social cues



A Person's Intent is Irrelevant

Quid Pro Quo

- Did the employee suffer an adverse action?
- Did the employer take that action solely or in part because of the employee's protected status?

Hostile Work Environment

- Did the employee find the work environment hostile?
- Would a reasonable person in the employee's position consider the work environment hostile?

Fear of:

Humiliation

Ostracism

Damage to Reputation or Career

Retaliation

Blame

Getting Someone Else in Trouble

Disbelief

Minimalization

Why Harassment is not Reported



Idaho Human Rights Commission

FY 2020 Total Claims

| | | |
|------------------------|------------|------------|
| Disability | 112 | 36% |
| Retaliation | 88 | 28% |
| Sex | 107 | 35% |
| Age (40+) | 33 | 11% |
| National Origin | 30 | 10% |
| Race | 14 | 5% |
| Religion | 11 | 4% |

DHR Employee Complaint Line

Since January 1, 2021, DHR has received 32 complaints:

| | |
|-------------------|-----|
| 10 Abuse of Power | 31% |
| 6 Discrimination | 19% |
| 13 Harassment | 41% |
| 2 Waste | 6% |
| 1 Fraud | 3% |

Purpose

The State of Idaho Employee Complaint Line is a critical part of Governor Little's efforts to protect the integrity of the State of Idaho and its employees.

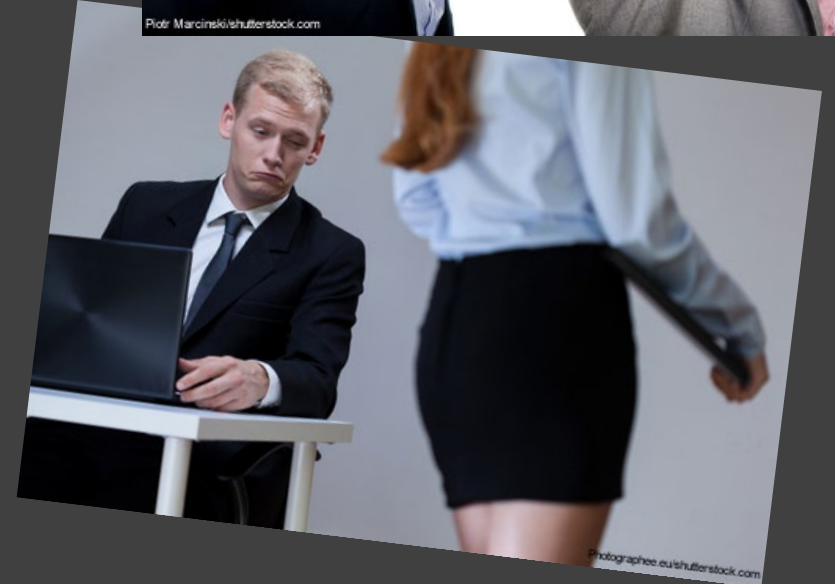
Complaint Process

Complaint line staff will follow documented processes and procedures to ensure consistency in discussing and documenting sensitive issues, prioritizing complaints, and conducting appropriate follow up.



Potential Problems

Examples of Potentially Harassing Conduct



Let's Grab a Drink

- Hanging out with co-workers outside the office
- Hanging out frequently with a co-worker outside of the office
- Flirting
- Hugging
- Touching a co-worker's hand
 - All three in the same interaction
 - All three in separate interactions
- Kissing a co-worker
- Hugging a co-worker after being asked not to

Let's Form a Fantasy Football Team

- Playing fantasy football with co-workers
- Playing fantasy football with only your male co-workers
- Failing to invite female co-workers to participate
- Using your fantasy football team as a way to discuss work
 - All three at the same time
- Making decisions while playing fantasy football that only include those on the team (i.e., excluding female co-workers from projects, promotional opportunities, etc.)



Confidentiality

Know Your Responsibilities

- Keep an Open Mind
- Treat the Complainant with Respect and Compassion
- Actively Listen
- Maintain Emotions
- Remain Neutral
- Take Complaint Seriously
- Document the Facts
- Be Timely
- Report each claim by following Agency Procedures
- Maintain Professional Relationship
- Keep the Least Amount of People Involved



If you Receive a
Complaint
Know what to do

Retaliation

Retaliation defined and explained

Retaliation Defined

- Taking materially adverse employment action against an employee because s/he engaged in activity protected by law
 - What is adverse action?
 - Any action that may dissuade a reasonable person from participating in the protected activity

Retaliation Can Include

Protection to Oppose or Report

- Fail to hire;
- Discharge;
- Fail to promote; or
- Treat differently with regard to compensation, terms/conditions, or privileges of employment due to the employee's ***protected conduct***



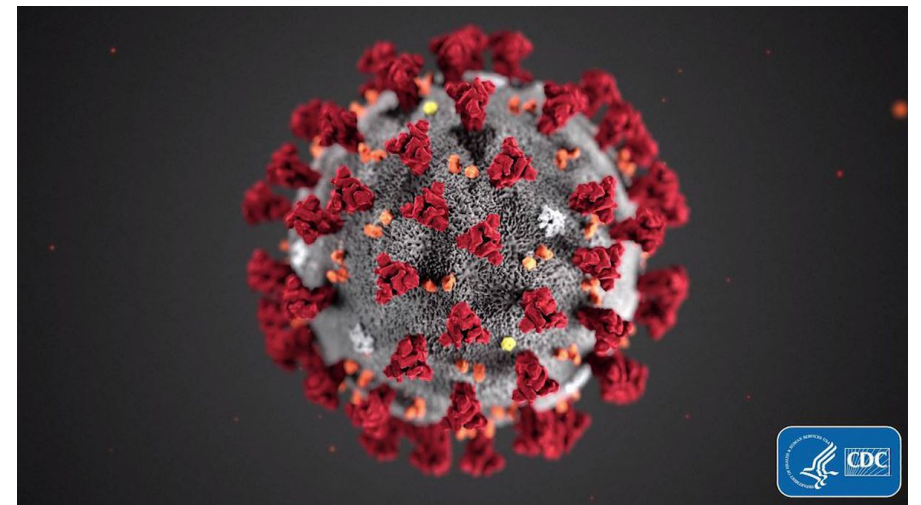
1. Leadership and accountability.
2. Civility and bystander intervention training.
3. No tolerance policy – practical top down through the organization and repeated on a frequent/regular basis.
4. Simple and clean descriptions of prohibited conduct.
5. Fair and prompt reporting system to provide several options for employees to report harassment, discrimination and whistleblowing. (i.e. supervisor, department head, HR director, Board, DHR, DAG)
6. Thorough and impartial investigation.
7. Assurance of immediate and proportionate corrective action.
8. No tolerance policy for retaliation.
9. Immediate and proportionate corrective action.
10. Whether claim was reported directly to you, or if you witness it.



How to Avoid Harassment and Retaliation Claims

Retaliation and COVID-19

- Cannot take any action related to someone's employment because s/he did/did not contract COVID-19
- Limited exception
 - Can withdraw an offer employment if the individual cannot start on the expected start date because of exposure or positive test result – AND – the immediate need to fill the position exists



Social Media

The public's perception matters, not your intention.

perception about agency and administration.

you are no longer in control of how it is used.

Social media posts can be used as evidence.

Consider:

- First Amendment Rights
- Public Records Laws

Posts made through a personal account can still impact the workplace.



Consider this before you

Conducting business online can violate open meeting laws.

Common Types of Social Media



Facebook



Instagram



Tumblr



Pinterest



Reddit



Twitter



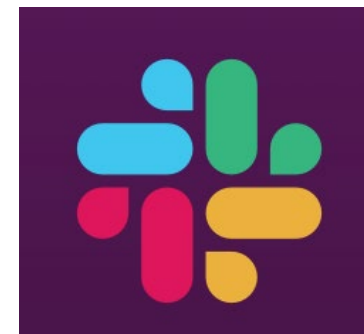
Snapchat



WhatsApp



LinkedIn



Slack

Harassment, the Internet, and Off-Duty Conduct

- "This case highlights the issues of employer accountability for harassment in the modern workplace. Employee workdays and jobsites are no longer defined by timecards and the walls of a building, but by the breadth of a digital day and the reach of electronic communications. The policy United has agreed to implement can perhaps serve to provide ideas for other companies adapting to the increased risks posed by employee misuse of technology."

Diversity: Describes the many ways humans differ; psychological, physical, and social differences which occur among all individuals including race, ethnicity nationality, socioeconomic status, religion, economic, geographic location, education, age, gender, sex, sexual orientation, disability, marital status, mental and physical ability and learning styles, to name a few. (Univ of Washington – School of Public Health)

Inclusion: Authentically bringing individuals and groups into processes, activities, decisions, policy making together in a way that shares power. (Id.)

Equity: Giving everyone what they need to be successful regardless of race, sexual orientation, gender, disability, religion, age, and all of the ways humans differ.

State Law Requires our workforce to be treated in these ways regardless of any of our differences.



**DIVERSITY, EQUITY
& INCLUSION**

- House Bill 440 was signed into law July 1, 2020.
- HB440 provided a new section of Idaho Code, 67-5909A.
- Idaho Code 67-5909A states, “The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.”



**DIVERSITY, EQUITY
& INCLUSION**

Next steps.

Questions?

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