



Creating & Maintaining A Great Workplace

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DOUBLE ISSUE

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Person of the Year

TIME

THE
SILENCE
BREAKERS

THE VOICES
THAT LAUNCHED
A MOVEMENT



THE SILENCE BREAKERS

time.com

TOOLS, TECHNIQUES AND TECHNOLOGIES FOR

Louis Orslene, Job Accommodat

E X H I B I T H A L L

MENT OR
RSHIP?

**DISCRIMINATION, HARASSMENT
AND RETALIATION**

BUILDIN
PROG

Shirley Kelly
University

Sean Halloran, Littler

CLOSING SESS

POWERFUL PUR

Heather Kinsie, The St

1:30 PM TO 3:00 PM

Discrimination, Harassment & Retaliation

Sean Halloran, Littler

This session will provide an overview and update on federal laws that prohibit discrimination and harassment in the workplace. Familiarity with these regulations and trends is essential for HR professionals. Not only can workplace discrimination and harassment affect employee productivity, it can divert resources from the organization's real business. Improper conduct can also lead to liability for the organization and/or individual employees for workplace discrimination and harassment.

What's New?



McDonald's employees stage first #MeToo strike



INDUSTRYEXPOSED.COM

Welcome to IndustryExposed.com

You're not the first, but you might be the last.

Put your name (or don't) on the list and out an A-hole here:

 **Anonymous** 23 February 2018

#Me Too. Déjà vu all over again as BAD boy stakes out his latest prey at BrandSoar. Some things never change – I thought Mad Men was just a TV show, not real life.

 **Yours Truly** 18 February 2018

#Me Too.

 **@Add it up** 08 February 2018

I never thought I'd add my name to a list like this or be able to speak up, but you are all sooooo courageous. It was several years ago,



me
too.

TIME'S™
==UP

Are Laws Changing?

- Training is getting legislated
- NDA's disfavored
- Tax bill – regulating settlements
- Arbitration Agreements

TIME
POLITICS • CONGRESS

Every Woman in the Senate Is Demanding a Vote on a Sexual Harassment Bill

The U.S. Capitol is seen in Washington, DC on January 22, 2018 after the US Senate reached a deal to reopen the federal government, with Democrats accepting a compromise spending bill. MANDEL NGAN—AFP/Getty Images

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"Times Up" for New York Employers - Governor Cuomo Signs Historic Anti-Harassment Legislation

USA | April 23 2018

On April 12, 2018, New York Governor Andrew Cuomo signed into law the New York State budget bill, which makes some big changes in the obligations of New York employers relative to sexual harassment. The new law has both immediate and rolling implications for all New York employers.

EFFECTIVE IMMEDIATELY (E.G. RIGHT NOW)

The New York State Human Rights Law, which applies to employers with four or more employees, now covers contractors, subcontractors, vendors, and independent contractors. This means that employers must now train all employees, not just those who are directly employed by the employer, its agents, or supervisors.

New York Law Journal

Bar NDAs? Not So Fast Please!

Is the current rush to bar NDAs really helpful to victims of sexual harassment? Albany's answer provided in legislation passed last weekend—banning NDAs in agreements that settle sexual harassment claims unless they explicitly state that confidentiality is the "complainant's preference"—going to change anything? We are skeptical.

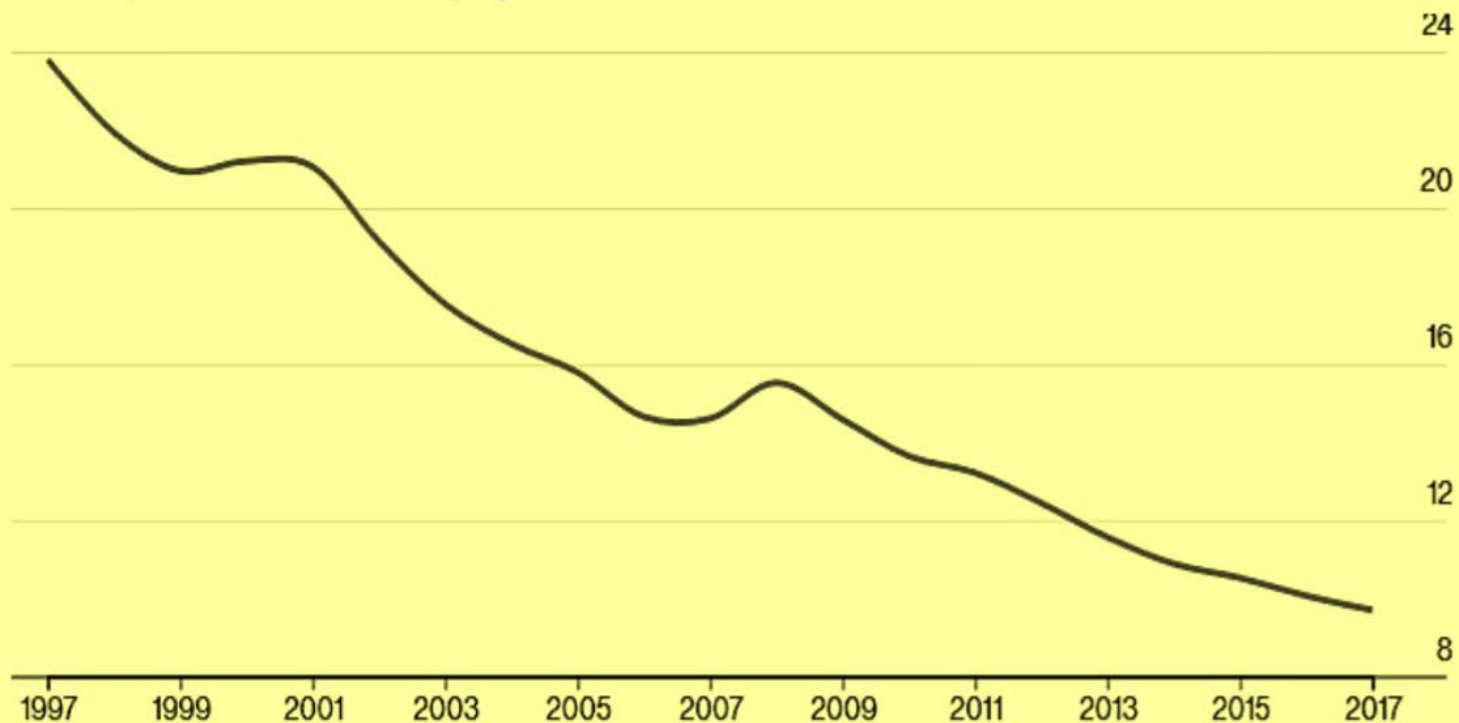
By Shira A. Scheindlin and Reshale Fink | April 18, 2018 at 12:50 PM

Conflict may be inevitable but litigation isn't. Plan ahead for cost-effective dispute resolution with an ADR contract clause. Download our Clause Workbook

What's New?

EEOC sexual harassment complaints

Per 100,000 U.S. women employees



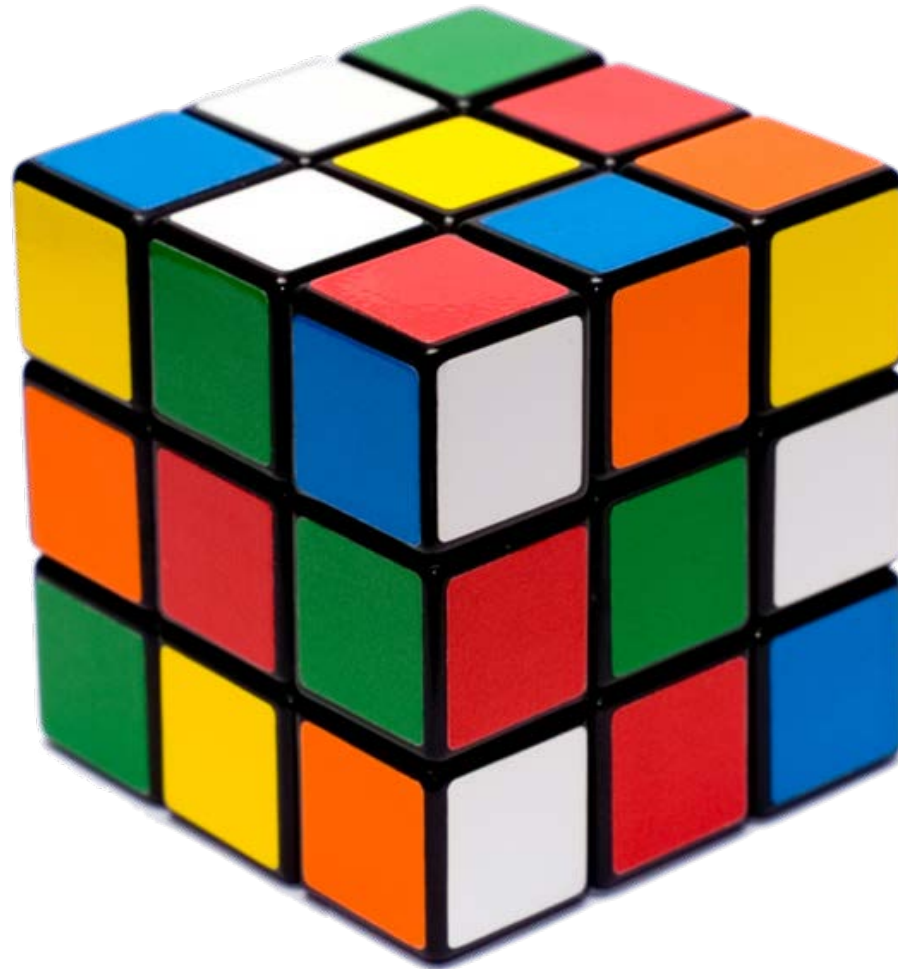
What's New?

- Proactive strategies:
 - Promoting Civility
 - Situational Awareness
 - Bystander Intervention
 - Prepare for Disasters

#Whattodo



It's NOT Complicated





Creating & Maintaining A Great Workplace





Society, all human life, is guided by rules. The only question before us is: What are the rules that we choose to live by?

George Washington - 1796 farewell address

TIPS ON DEALING WITH WOMEN

DON'T MAKE THE FOLLOWING ASSUMPTIONS

- 0 She's making enough money for a woman.
- 0 She's happy in her present position.
- 0 If she doesn't like it, why doesn't she leave.
- 0 She doesn't need to advance.
- 0 She likes being a secretary.
- 0 The fellows would resent her.
- 0 A woman can't work under pressure.
- 0 If she's married, of course she is going to get pregnant.
- 0 The person answering the telephone is a secretary.

DON'T REFER TO WOMEN AS:

- 0 The Girls
- 0 The Gals
- 0 Sweetie
- 0 Honey
- 0 Dear
- 0 My Girl

WHEN A WOMAN ATTENDS A MEETING, DON'T AUTOMATICALLY APPOINT HER SECRETARY.

Identifying Inappropriate Behavior (Including Harassment)



**Inappropriate behavior
can be classified as:**

- **Rude**
- **In bad taste**
- **Unwelcome**
- **Hostile**
- **Hateful**
- **Hurtful**



The Importance of a Respect-Based Workplace

- What are the benefits of a respect-based workplace?
- What are the consequences of a work environment where employees do not show respect for one another?
- Why is a respect-based workplace important to you? Your co-workers? Your customers? Your brand?



What is a respect-based workplace?

- What does “a respectful environment” mean to you?
- What behaviors build respectful work relationships?
- What does a respectful conversation look like for you?
- What does professionalism look like to you?



New Considerations—Think Ahead

Proactively protect your brand:

- Work with PR to have pre-prepared press releases and social media messages ready to go out when necessary
- Be prepared to be more transparent



The curtain has been lifted!

Situational Awareness



We stress that employers need to maintain “situational awareness” - an employer noting surprise that women were being sexually assaulted on the night shift when they worked in isolation and their schedules were controlled by men is cold comfort to the victims of these assaults.

— EEOC Task Force Report



Coffee/
Pant
741

Apply Situational Awareness:

Recognize Potential Risk Factors Among Your Workforce



Homogeneous
Workforce

Reset

Non-Conforming
Employees

Reset

Cultural & Language
Differences

Reset

Outside
Events

Reset

Many Young
Employees

Reset

High-Value
Employees

Reset

Power
Disparities

Reset

Customer
Satisfaction

Reset

Monotony

Reset

Isolation

Reset

Alcohol

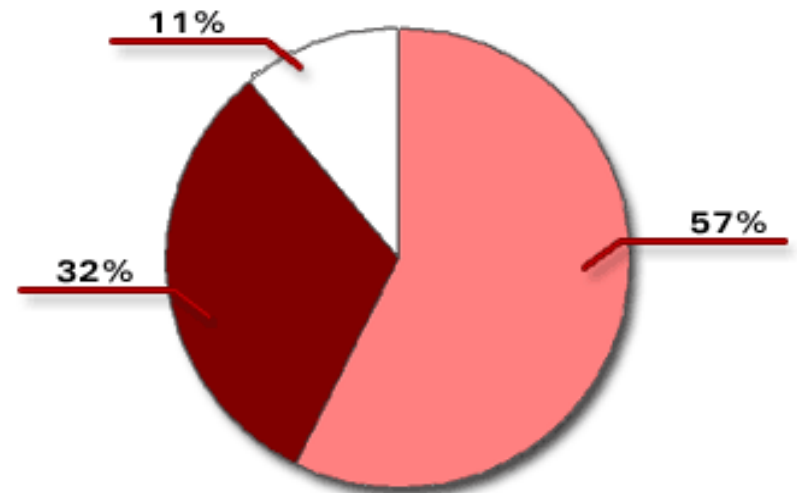
Reset

Decentralization

Reset

57% of employees admit to having had an office romance

Have you ever been involved in an office romance?



Yes No No, but willing

Source: Vault Inc.

Office Romance Survey

Harassment?



A Designed Organizational Climate

Organizational climate is an important driver of harassment because it is the **norms of the workplace**; it basically guides employees... to know what to do when no one is watching.

— *EEOC Task Force Report*



What is *Tone* at the TOP?

- What does this term mean?
- How important it is to have tone at the top?
- How do we get there?



What is *Tone* at the TOP?

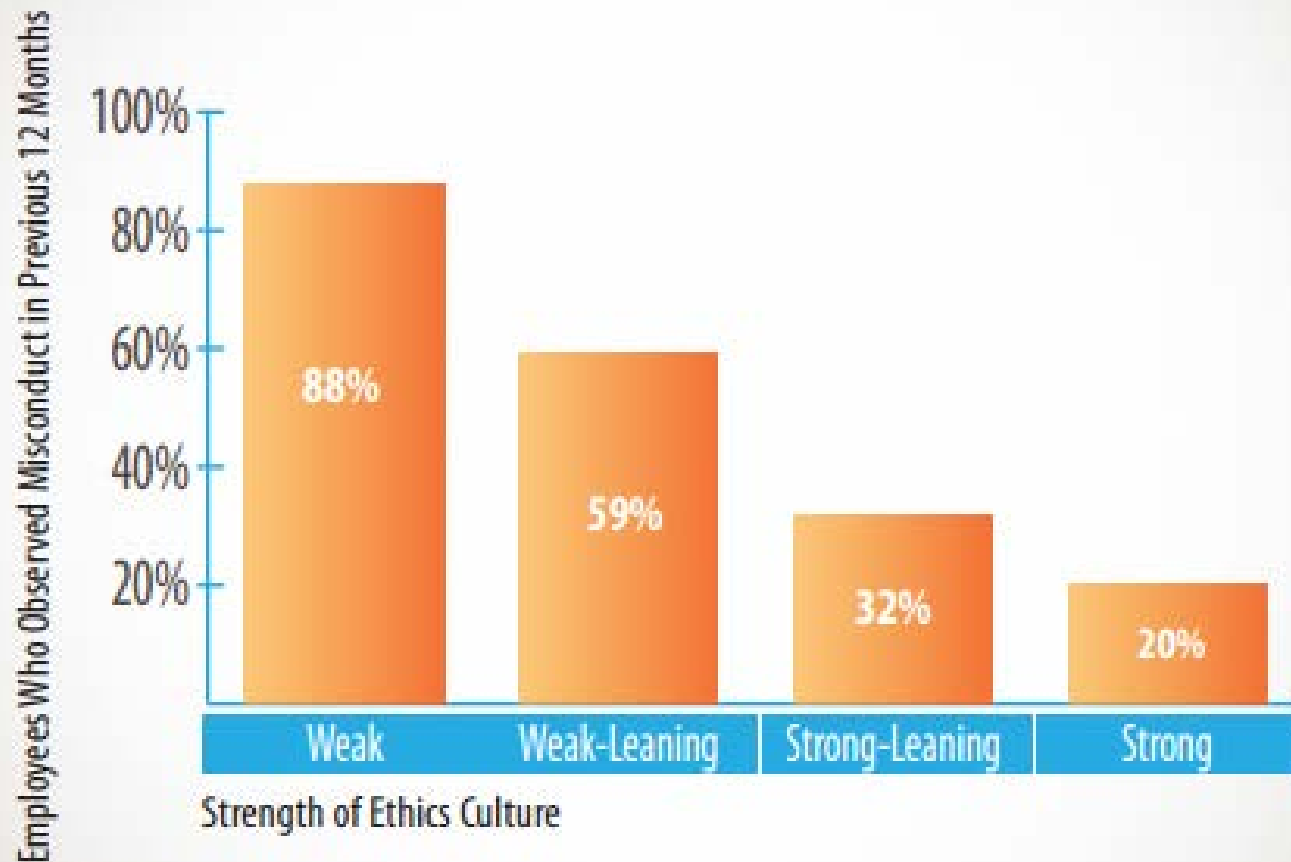
- What does this term mean?
- How important it is to have tone at the top?
- How do we get there?

Leadership and commitment to a diverse, inclusive, and respectful workplace in which harassment is simply not acceptable is paramount.



Culture Matters

Misconduct Declines As Ethics Culture Improves



Rewards & Recognition Programs

These programs work.

Use incentives to encourage ethical conduct and compliance

Incorporate meaningful measures tied to ethical values into compensation decisions and performance evaluations



Workplace Training

- We believe effective training can reduce workplace harassment, and recognize that ineffective training can be unhelpful or even counterproductive...
- Effective training cannot occur in a vacuum—it must be part of a holistic culture of non-harassment that starts at the top...
- One size does not fit all: Training is most effective when tailored to the specific workforce and workplace, and to different cohorts of employees...
- When trained correctly, middle-managers and first-line supervisors in particular can be an employer's most valuable resource in preventing and stopping harassment.

— *EEOC Task Force Report*

Civility Training



Focus on what employees and managers *should* do, rather than what they *should not* do

- Interpersonal skills
- Conflict resolution
- Effective supervisory techniques

Bystander Training—General Strategy



Assess the Situation



Adjust Your Response



Decide How to Help

When You Observe Potential Harassment

Recognize

Does this issue deserve a response?

Remove

Yourself from participation or assent.

Redirect

Conversation to express your disapproval.

Reeducate

As to the offense, risk and policy.

Respond

What, if any, “formal” response is needed?

Ask Yourself

Do our employees speak up when they observe something wrong?

- List 5 barriers keeping these employees from speaking up.
- List 5 solutions.



Be Advised...NO comes in many forms

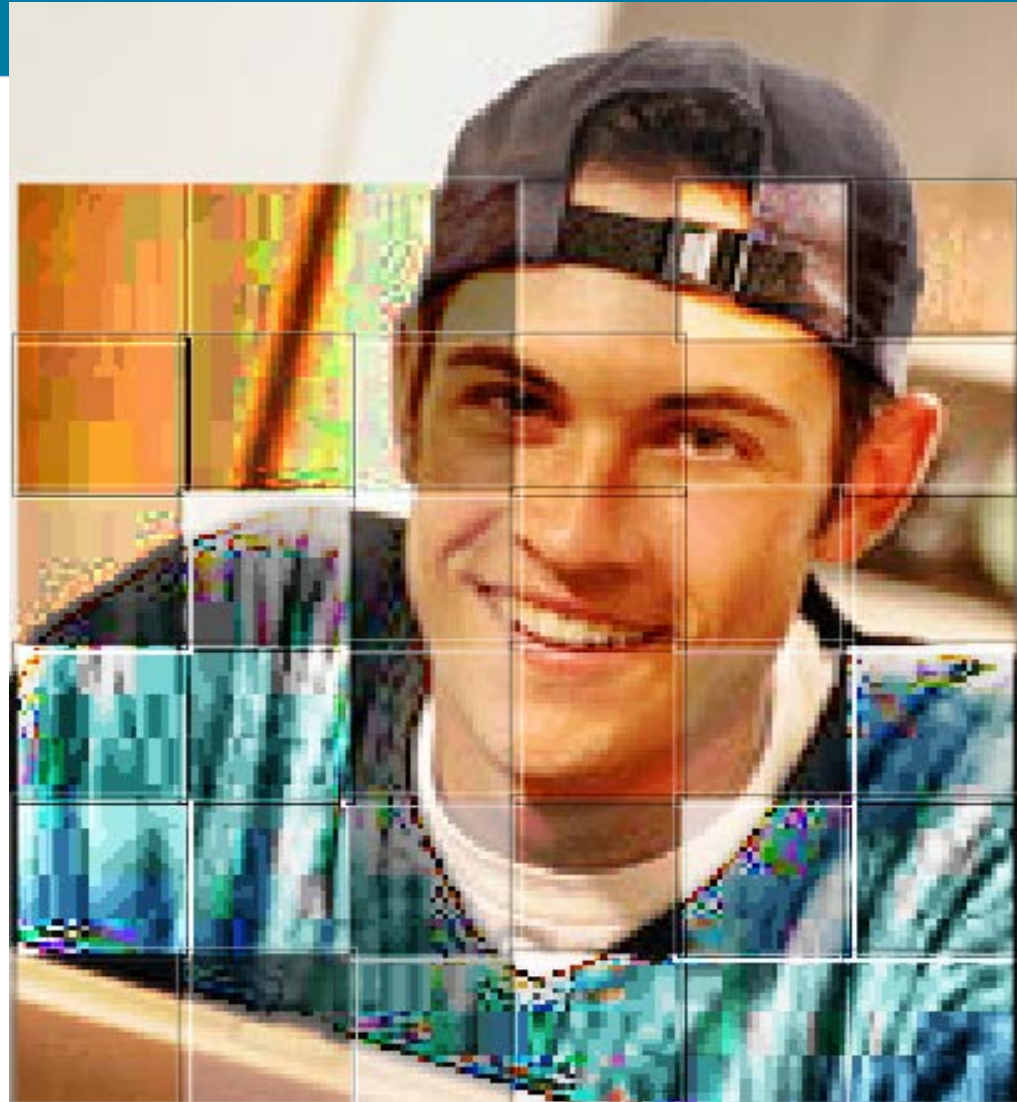


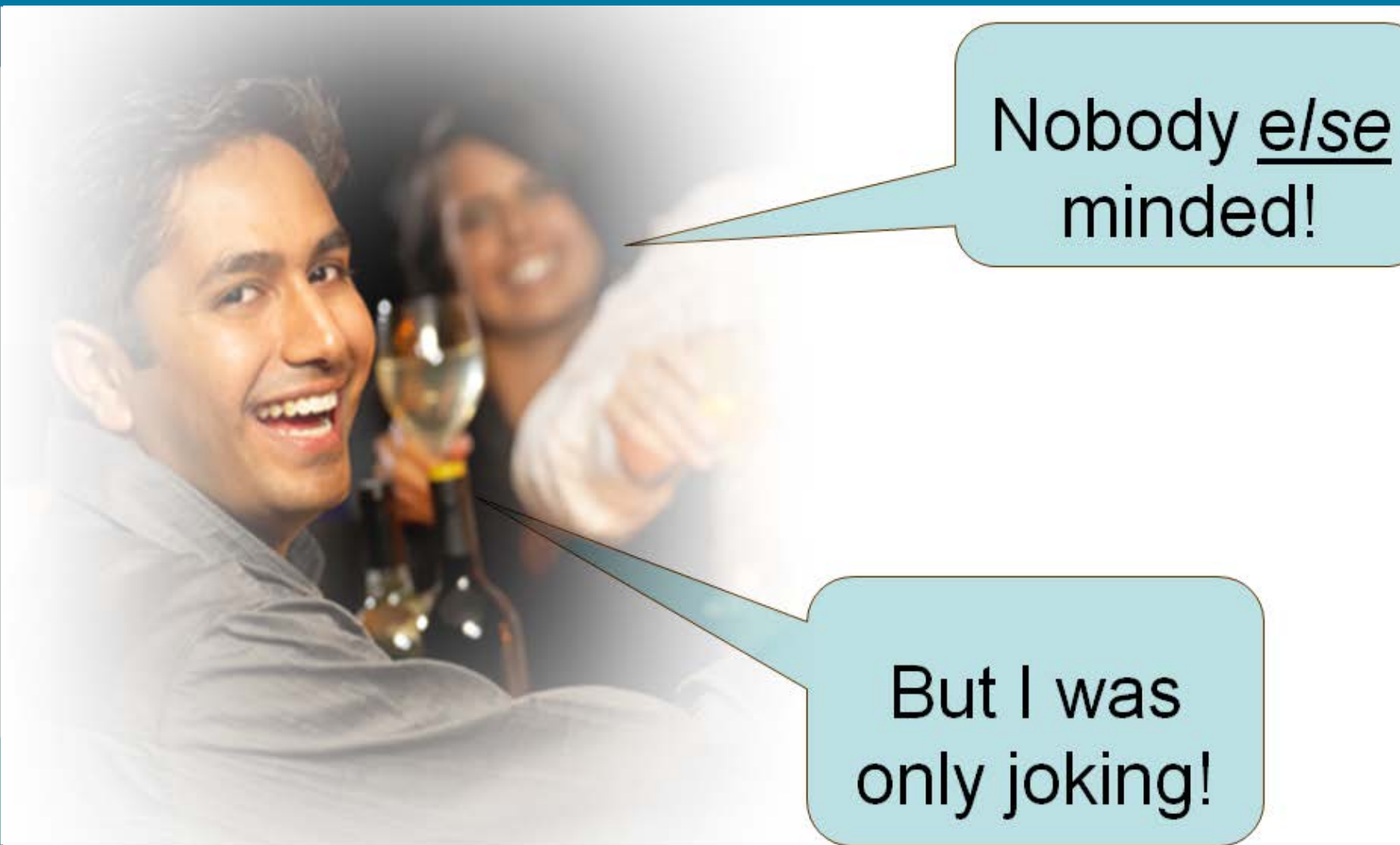
- Verbal response
(or lack of one)
“No” means no
“Maybe” also means no
- Expression changes
- Body language

Every manager & employee needs to pay attention to the responses of others.

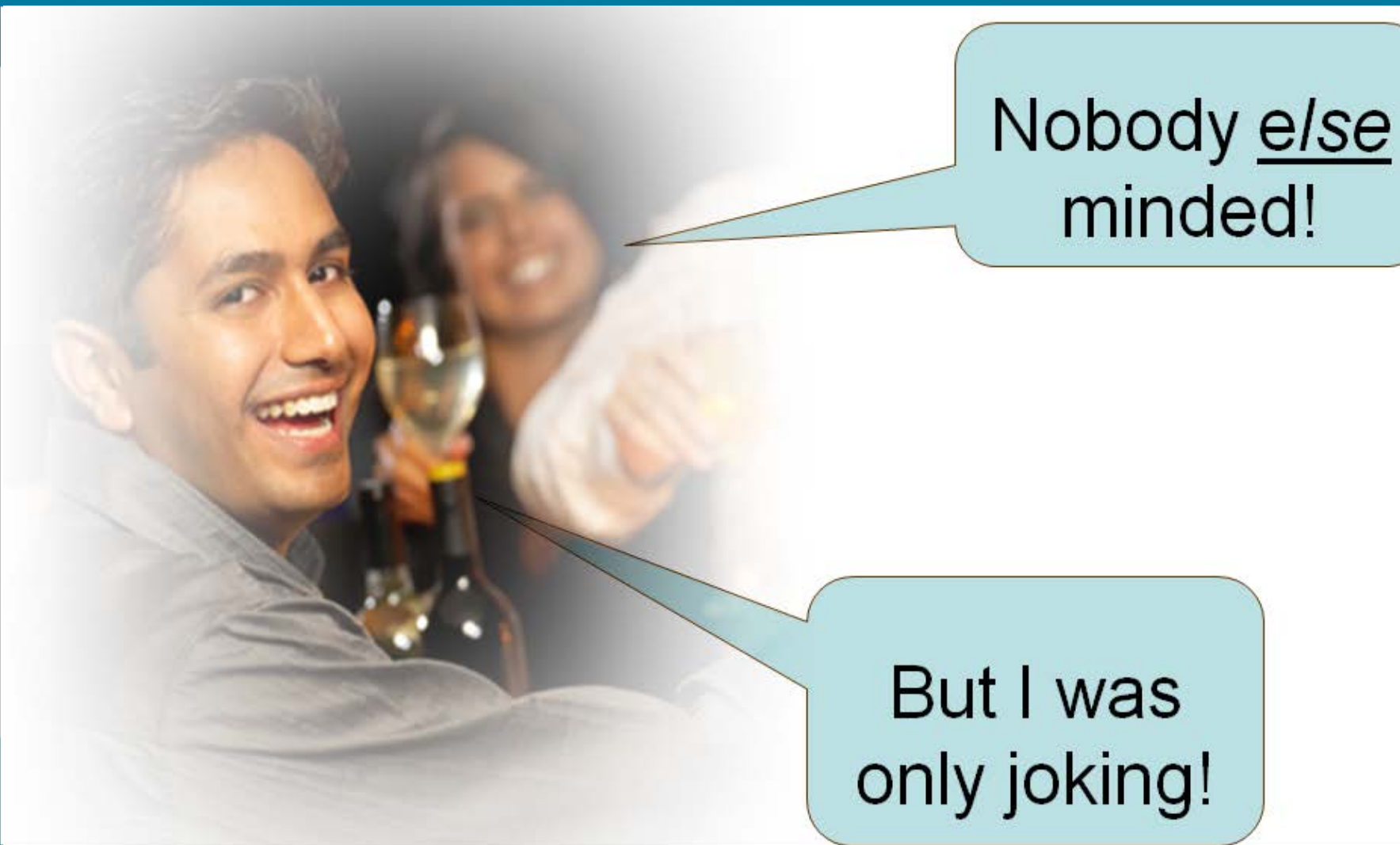
It doesn't matter that ...

- The person *intended* to be funny
- Others thought it was funny
- The person complaining seemed to go along at the time



A photograph of a man in a grey shirt smiling broadly at a social gathering. In the background, a woman is also smiling and holding a glass. A speech bubble points to the man's head.

Nobody e/se
minded!

A photograph of a man in a grey shirt smiling broadly at a social gathering. In the background, a woman is also smiling and holding a glass. A speech bubble points to the man's head.

But I was
only joking!



Little Learning Group

Forms of Bullying in the Workplace



Gossip



Creating Stress



Favoritism



Undermining Performance



Criticism

What does bullying mean?

- It means that an individual or individuals purposefully do something or fail to do something that affects their co-worker negatively.
- It could make the targeted employee feel uncomfortable or can be serious enough as to create a hostile work environment for that employee.
- It undermines legitimate business interests when bullies' personal agendas take precedence over work itself.
- It has been compared to domestic violence at work.

Impact of Bullying in the Workplace

- Employee complaints
- Client complaints
- Adverse publicity
- Costs (i.e., weakened profits)
- Legal counsel to resolve formal complaints
- Turnover
- Absenteeism
- Loss of trained and effective workers

- Engagement
- Morale
- Attendance
- Client satisfaction
- Reputation and organization's image

Constructive criticism?





- don't talk about laws
- a focus on compliance, claim prevention and defense is misguided



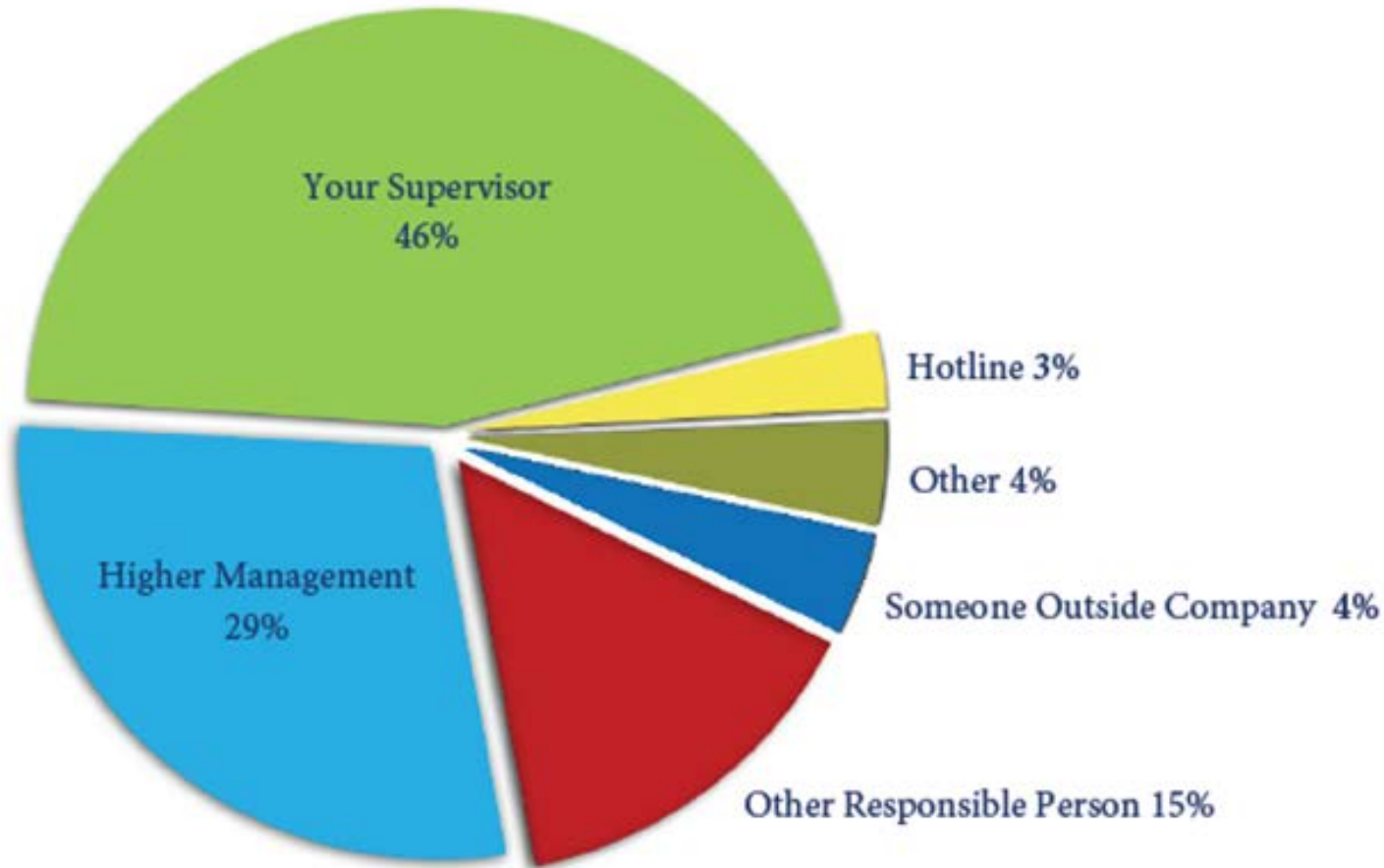
- explore civility & making a respectful workplace
- encourage speaking up
- reinforce that accusations are taken seriously
- emphasize that retaliation will not be tolerated



- Tailor your training to your company's unique situation
- Train workers on what they should be doing; not just what they shouldn't
- Remember that almost everyone wants to be treated with fairness, respect and dignity.

- Training should be separate for managers and rank & file
- A single training event alone is unlikely to change institutional behavior
- Topics that are continuously talked about and regularly reinforced will establish institutional behavior

Vast Majority of Reports are Made to Managers & Supervisors



Reporting & Intake Procedures

Can you:

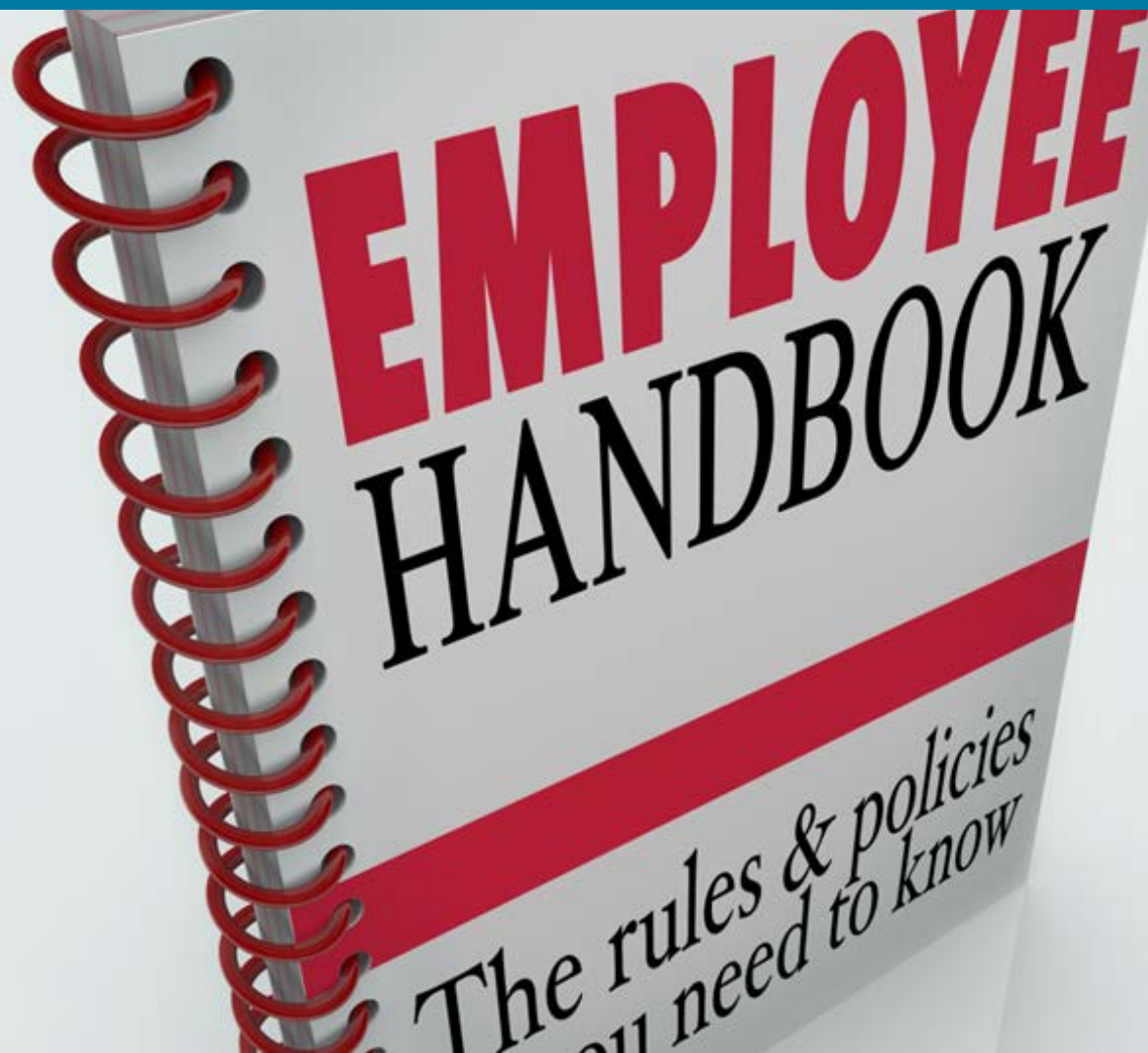
- **Recognize** a complaint when you hear it?
- **Address** it appropriately (almost always involving HR, Legal, or senior management)?
- **Not retaliate** against those who complain/participate?



Common Mistakes

- What are some of the big mistakes that employers make in handling reports of alleged misconduct from employees?





Let's Practice



- *What Would You Do?*
- *What Would You Say?*





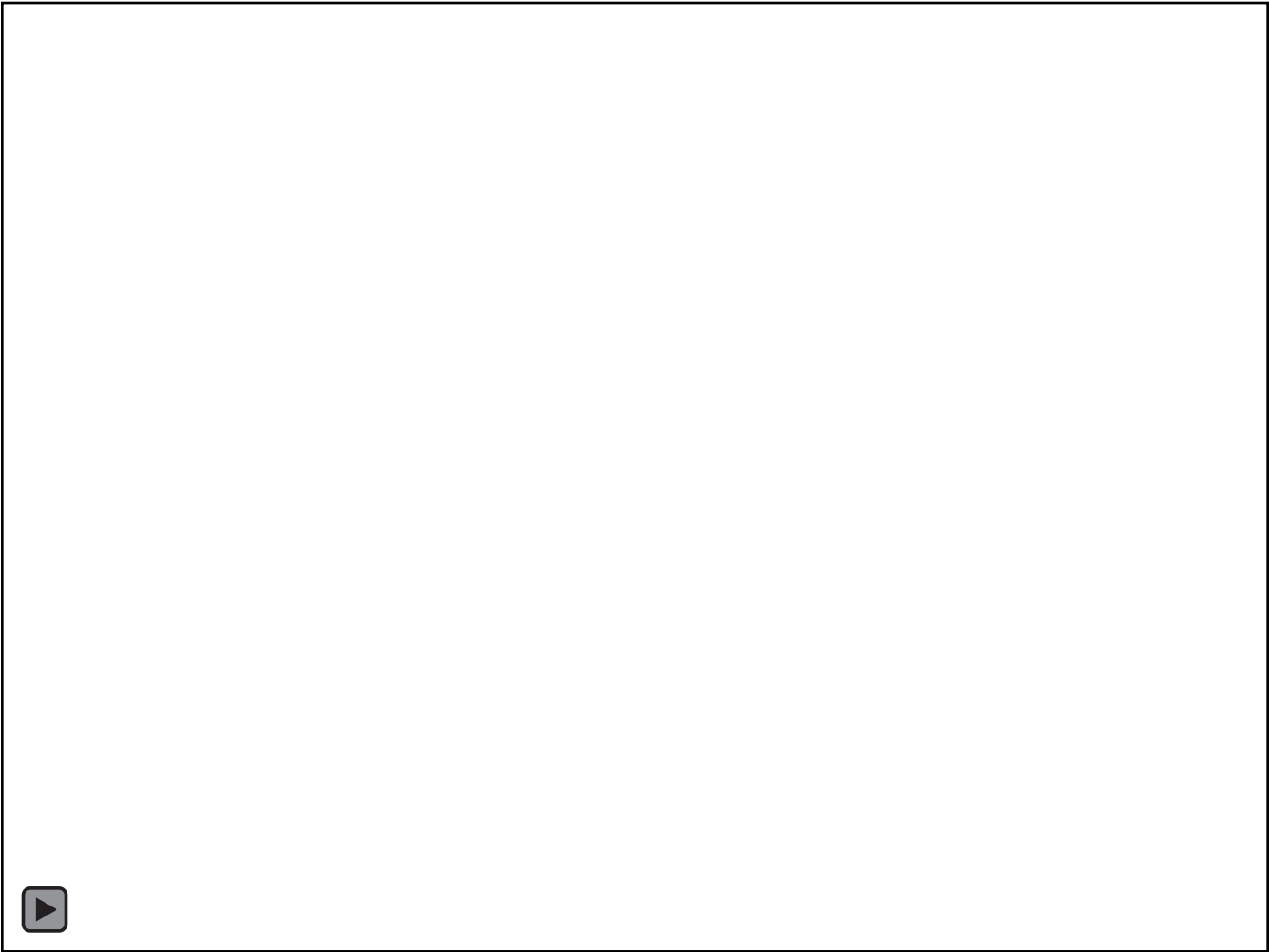








Little Learning Group



Is This A Problem?



Which Is More Effective?

- “I don’t think it is appropriate to talk about religion at work the way you did.” vs. “Why are you such a bigot?”
- “I’m very uncomfortable with how you joke and make degrading comments about sexual orientation.” vs. “You make me feel like “#*/@?!”
- “Your yelling at me is counterproductive. Please speak calmly so we can work through the problem rationally.” vs. “What is wrong with you? That is not the way you speak to people!”

Option? Setting a Boundary

Signal your discomfort and give them a way to reconsider their conduct:

- “That is not okay.”
- “Don’t speak to [them/me/her] like that.”
- “How would you feel if someone said that to you?”
- “I don’t think she/he’s interested, you need to move on.”
- “You’re making people uncomfortable.”
- “Let’s focus on work and keep personal lives outside.”

Use the “Call Them Out” approach”:

- “I beg your pardon?”
- “Did you really just say [what I think you just said]?”



Option? Enforce a Standard

A stronger tone may be warranted depending on the severity—remember the Zero Tolerance Standard:

- “Are you aware that we have policies outlining appropriate – and inappropriate -- ways to communicate in the workplace?”
- “That’s inappropriate, prohibited, not tolerated, unacceptable here, etc.”
- “Do you understand how that comment could be considered offensive?”
- Attack the behavior, not the person. Tell them what they are doing that you do not like (e.g. “I feel offended when....” instead of “You are being a jerk!”).



questions?