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On the topic:

**Sexual Harassment Prevention Basics**

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"The #MeToo movement has also had legal repercussions, as the number of sex discrimination claims and sexual harassment complaints filed with the Equal Employment Opportunity Commission (EEOC) has risen. Organizations must be proactive in dealing with sexual harassment, including clearly disseminating and strictly enforcing policies against harassment."

#MeToo in Medicine: Year in Review by Janet Smith, The National Law Review, Friday, December 21, 2018
Objectives

This session will help participants:

- Recognize the behaviors that signify sexual harassment
- Learn what you can do to contribute to creating a hostile-free environment
- Review current statistics about sexual harassment cases
- Roles and responsibilities in preventing and reporting sexual harassment

Recognize The Behaviors That Signify Sexual Harassment
### What is Sexual Harassment?

It includes unwelcome conduct, either of a sexual nature or which is directed at an individual because of that individual's sex when:

- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment;
- Such conduct is made either explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of such conduct is used as the basis for employment decisions.

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### Code of Medical Ethics Opinion 9.1.3, American Medical Association

- Sexual harassment can be defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.
Title VII of the Civil Rights Act of 1964

A federal law that prohibits discrimination in employment in hiring, firing, compensation, and terms, conditions or privileges of employment on the basis of race, color, religion, national origin, or sex.

Sexual harassment is considered to be a form of sex discrimination.

Applies to employers with 15 or more employees on the payroll or government employers regardless of the number of employees.

Behavior of a Sexual Nature

- Unwanted sexual text messages/emails
- Comments about anatomy/body parts
- Propositions to engage in sexual activity
- Being asked repeatedly for a date
- Offer of a promotion in exchange for a sexual favor
- Threats of punishment for refusal of a sexual favor
- Deliberately infringing on body space
- Unwanted groping or other physical contact
- Deliberate fondling of self
- Grabbing body parts
- Rape
Quid Pro Quo Sexual Harassment

Means “This for That” in Latin.
May occur when a person in authority trades, or tries to trade, job benefits for sexual favors.
OR
May occur between an employee and someone with authority, who has the ability to grant or withhold job benefits.

Hostile Environment

Verbal or physical conduct of a sexual nature that interferes with an individual's work performance by creating an intimidating, hostile, humiliating, or sexually offensive work environment.

Sexual or discriminatory displays or publications anywhere in the workplace.

Hostile actions taken against an individual because of that individual's sex.
Sex Stereotyping

Harassing a person because that person does not conform to gender stereotypes is sexual harassment.

Harassment because someone is performing a job that is usually or was previously performed mostly by persons of a different sex is sex discrimination.

Who can be the Harasser?

ANYONE!

Physicians, Nurses, Receptionists, Pharmaceutical Sales Reps

The Harasser does not have to be a supervisor or manager.

Sexual Harassment may occur between coworkers or third parties (non-employee, intern, vendor, customer, etc.)
Who can be a Victim of Sexual Harassment?

ANYONE!
Physicians, Nurses, Receptionists, Pharmaceutical Sales Reps

Males can be victims of Sexual Harassment.
Sexual Harassment can occur between two individuals of the same sex or gender.

Where Can Workplace Sexual Harassment Occur?

ANYWHERE!
Whenever and wherever employees are fulfilling their work responsibilities, including:
• Employer-sponsored events
• Conferences
• Office parties
• Off-site or during non-work hours
Example of Sexual Harassment Allegations

Three former medical administrative staff filed a complaint with the New York State Division of Human Rights against this osteopath doctor in the photo on the right in 2010.

In the complaint, the doctor was accused of touching staff and patients inappropriately; exposing himself in an examination room to staff on numerous occasions; complimenting on the body parts of an employee in a sexual manner; bringing an inflatable sex doll to an office party; propositioning an employee for a date; and attempting to kiss an employee.

Scenario – Is It Harassment?

A physician bumps into or brushes up against an assistant, first seemingly innocently and with contact only between non-sexual parts of the body, such as the bumping of shoulders together or the touching of the assistant’s arm with an elbow. Later, the doctor or dentist brushes against an assistant’s rear on a number of occasions.
Scenario – Is It Harassment?

The dentist or doctor talks about personal sexual issues as a way to appear more “normal” in the office with staff.

Anna was recently hired as a receptionist in a busy doctor’s office. One of the nurses, Shirley, often stops by the front desk area to pick up or drop off charts. Several times per week, Shirley will touch Anna’s hair while complimenting her on the style. Anna has told Shirley on multiple occasions that she doesn’t like anyone touching her hair, but Shirley continues to play with Anna’s hair on a regular basis.
Learn what you can do to contribute to creating a hostile-free environment

Creating a Hostile-Free Environment

- Employers are encouraged to take steps necessary to prevent sexual harassment from occurring.
- Employers should clearly communicate to employees that sexual harassment will not be tolerated.
- Employers should make sure that all employees attend sexual harassment training.
- Employers should also establish an effective complaint or grievance process.
- Employers must also take immediate and appropriate action when an employee complains.
- Employees should report all incidents of sexual harassment that they experience or witness.
- Employees should be active bystanders who speak out against sexual harassing conduct whenever they see it.
Review current statistics about sexual harassment cases

Staggering Statistics

- During the 2016 fiscal year, the federal Equal Employment Opportunity Commission (EEOC) received more than 27,000 complaints of sex-based discrimination, according to the news website FiveThirtyEight. Health care was the industry most often mentioned.

- A 2017 study published in the journal Physical Therapy found more than 80% of almost 900 physical therapists surveyed said they'd been subjected to sexual remarks, touches, sexual assault, and indecent exposure during their careers. Nearly half said they had experienced one of those situations in the past year.

- Of 8,300 health care-related complaints they identified from 1999 to 2016, more than 3,000 were from employees at hospitals, 2,500 from workers at nursing care facilities, and more than 1,900 from “other miscellaneous ambulatory health care services.”
Roles and responsibilities in preventing and reporting sexual harassment

What Should I Do If I Am Harassed?

- Identify the unwelcome behavior.
- Document all evidence of harassment and retaliation, as well as evidence of your job performance.
- Review your employer’s sexual harassment policies and procedures.
- Report the behavior based on your employer’s sexual harassment reporting policies. If the behavior involves criminal behavior such as rape and assault, file a report with your local police department, too.
- Allow the employer sufficient time (at least 30 days) to investigate your sexual harassment investigation.
- If your employer doesn't act, or you do not agree with the employer’s findings consider contacting a lawyer or filing a charge with the US Equal Employment Opportunity Commission (EEOC) or a Fair Employment Practice Agency (FEPA) at the state or local level.
Supervisors and managers are held to a high standard of behavior.

Supervisors are:
- Required to report any harassment reported to them or which they observe.
- Responsible for any harassment or discrimination they should have known about.
- Expected to model appropriate behavior.

The Supervisor's Responsibility

The Employer's Responsibility

They should clearly communicate to employees that sexual harassment will not be tolerated.
They can do so by providing sexual harassment training to their employees.
Employers should establish an effective complaint or grievance process.
They should take immediate and appropriate action when an employee complains.

-Adapted from EEOC Recommendations
What Should I Do If I Witness Sexual Harassment?

Anyone who witnesses or becomes aware of potential instances of sexual harassment should report it to a supervisor, manager or designee.

It is unlawful for an employer to retaliate against you for reporting suspected sexual harassment or assisting in any investigation.

Protected Activities

Any employee engaged in “protected activity” is protected by law from being retaliated against.

Protected activities include:
- Making a complaint about harassment or suspected harassment
- Providing information during an investigation
- Testifying in connection with complaint
What is Retaliation?

Any action to alter an employee's terms and conditions of employment because that individual engaged in protected activities.

Examples:
- Sudden change in work schedule or work location
- Demotion

Internal Investigation Process

- An immediate review of the allegations should be conducted by a senior executive or human resources or legal professional who is an experienced workplace investigator.
- Interviews from the accuser, alleged harasser, and all relevant witnesses must be conducted.
- Relevant documents, emails or phone records will be requested, preserved and obtained.
- The individual who complained and the individual(s) accused of sexual harassment are notified of final determination and that appropriate administrative action has been taken.
Possible Consequences and Corrective Actions

Possible consequences for the harasser in cases where there is sufficient evidence of sexual harassment and/or retaliation:

- Criminal prosecution
- Civil litigation with the potential for substantial damages
- Licensing board actions that may impose limitations on an individual's continued privilege to pursue his or her profession
- Termination
- Suspension
- Demotion or Transfer
- Written warning
- Remedial counseling

United States Equal Employment Opportunity Commission (EEOC)

- An individual can file a complaint with the EEOC anytime within 300 days from the alleged sexual harassment.
- You do not need to have an attorney to file.
- A complaint must be filed with the EEOC before you can file in federal court.
- When investigating allegations of sexual harassment, EEOC looks at the whole record: the circumstances, such as the nature of the sexual advances, and the context in which the alleged incidents occurred. A determination on the allegations is made from the facts on a case-by-case basis.
- For more information, go to www.EEOC.gov.
Fair Employment Practice Agencies

- Many states and localities have agencies that investigate employment discrimination complaints.

- The Texas Workforce Commission Civil Rights Division is the State of Texas FEPA.

Summary

- How to recognize harassment as inappropriate behavior.
- Harassment because of any protected characteristic is prohibited.
- Why workplace harassment is employment discrimination.
- All harassment should be reported.
- Supervisors and managers have a special responsibility to report harassment.
Questions

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