

PERMA 2016 FALL CONFERENCE

Drug and Alcohol Testing Policies

and

Harassment in the Workplace



Presented By:

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How Big is the Problem?

- According to a Johns Hopkins 2010 Study:
 - 250 million pain prescriptions filled in U.S.
 - Although U.S. is only 5% of global population, they consume 80% of all Opioids supplied in the world.
- According to Center for Disease Control (2011):
 - Almost 17,000 pharmaceutical deaths involved an overdose of painkillers

How Big is the Problem?

- According to Workers' Compensation Research Institute (2011):
 - Upwards of 85% of all injured workers in the U.S. received narcotic painkillers
 - These include Opioids
 - Hydrocodone (such as Vicodin)
 - Oxycodone (such as Oxycontin)

Non- DOT Policies

- Court Decisions have held:

Government is allowed to conduct drug tests without “individual suspicion” when there is a “special need” that outweighs the individuals privacy interest

- Examples of Special Need

- Operating Equipment (non-CDL)
- Healthcare
- Public Safety

Non- DOT Policies

- Court Decisions have also held:
 - Testing of public sector employees in positions that are not “Special Need”, violate Constitutional Protections of Rights to Privacy and Unlawful Search
- Examples:
 - Library Page
 - Solid Waste Coordinator

Non- DOT Policies

- Should be Formally Adopted by the Board
- Negotiable for Union Covered Employees
- Distributed to all Employees with Signed Acknowledgement
- Training for both supervisors and employees

DOT Policies

- Update your policy to reflect new regulatory changes
- Date of adoption should be clearly stated on the policy
- Future revisions of a substantive nature also receive formal approval

Policy Dissemination

- Policy distribution
 - Every covered employee
 - New hires
- Employees should sign an acknowledgement of receipt
- Form should be placed in personnel file
- Make sure all employees have the most current version of the policy

Required Tests

- Pre-employment
- Random
- Post-Accident
- Reasonable Suspicion
- Return to Duty
- Follow-up

Previous Employer Background Checks

- Before you hire a covered driver, you must:
 - Ask the applicant whether he/she has tested positive, or refused to test on any pre-employment drug/alcohol test within the last three years
 - Contact previous employers -- written consent for the release must accompany the request

Pre-Employment Testing (Drug Only)

- Must test
 - All applicants for DOT covered positions
 - All appointment from Non-DOT covered positions to DOT covered positions
- Negative drug test result is required prior to the employee's performance of safety-sensitive duties

Random Testing

- 25% - Drug / 10% - Alcohol
- Employee selection and notification cannot be predictable
- Employees must not receive advance notice
- Employees must proceed immediately to the collection site upon notification of test
- Document the selection process including numbers drawn, date, and time of notification and collection

Reasonable Suspicion Testing

- Supervisors must be trained on the facts, signs and symptoms, or patterns of behavior associated with drug use and/or alcohol misuse
 - 60 minutes drug detection
 - 60 minutes alcohol use
 - Only have to be trained one time

Reasonable Suspicion Testing

- An employee can be sent for a reasonable drug or alcohol test when a trained supervisor:
 - Can substantiate specific behaviors that may indicate drug use or alcohol misuse
 - Can identify specific job performance problems that may indicate prohibited drug use or alcohol misuse
 - Actually observes physical indications that prohibited drug use or alcohol misuse may be occurring

Reasonable Suspicion Testing

- Drugs - anytime on duty
- Alcohol – Observations made during, just preceding, or immediately following the performance of safety-sensitive functions
- Employees must be transported immediately to a collection site following a reasonable suspicion determination

Post-Accident Testing

- Drug and Alcohol testing is required following an accident:
 - Accident involved loss of life
 - Employee receives a moving vehicle citation and:
 - Accident resulted in bodily injury to a person
 - Accident resulted in the vehicle incurring disabling damage

Return to Duty Testing

- Following a positive drug or alcohol test result or test refusal, the individual may not perform safety-sensitive duties until
 - Evaluated by SAP
 - Completed SAP recommended treatment program
 - Completed a return-to-duty test with a negative test result

Follow-up Testing

- SAP submits follow-up testing plan to the employer
 - Unannounced
 - Minimum: 6 tests within 12 months after return-to-duty
 - Up to 60 months
 - Frequency and duration dependant on SAP evaluation
- Dates scheduled by the employer
- Employees subject to follow-up testing are also included in the random testing pool

Substances for which Tests are Administered

- Marijuana
- Cocaine
- Amphetamines
- Opiates (Includes Heroin and Morphine)
- Phencyclidine
- Alcohol

Prescriptions and Over-the-Counter Drugs

- Prescription Drugs must be in the possession of the individual to whom the prescription was written
- Employees must inform their supervisors of any prescription or over-the-counter drugs they are currently taking that could impair their ability to perform safety-sensitive functions
- Use of prescription and over-the-counter drugs is permitted as long as it does not impair job safety or safety and well-being of others in the workplace

Prohibited Conduct

- Consumption of alcohol is prohibited. . .
 - On duty
 - 4 hours prior to duty
 - 8 hours following an accident
- Consumption of illegal drugs is prohibited at all times
- Refusing to submit to required testing

Test Refusal

- Refusing to provide specimen
 - Insufficient volume without valid medical explanation
- Tampering, adulterating, or substituting specimen
- Failing to appear within a reasonable time - defined by employer
- Leaving the scene of an accident without just cause prior to submitting to a test

Test Refusal

- Failing to permit an observed or monitored collection when required
- Failing to take a second test when required
- Failing to undergo a medical examination when required
- Failing to cooperate with any part of the testing process
- Once test is underway, failing to remain at site and provide a specimen

Consequences for Engaging in Prohibited Conduct

- Positive drug or alcohol (≥ 0.04) test result or test refusal
 - Remove employee from safety-sensitive position
 - Advise employee of available resources
 - Refer for evaluation by a Substance Abuse Professional
 - Apply employer disciplinary policy

Consequences for Engaging in Prohibited Conduct

- Alcohol test result of 0.02 or greater but less than 0.04
 - Remove from safety-sensitive position for a minimum of 24 hours unless subsequent test results in a concentration of less than 0.02
 - Apply employer disciplinary policy

MRO Responsibilities

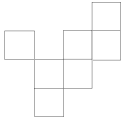
- Inform employee of verified result and right to request split specimen
- Notify employer of verified test result
 - Notification can be made via TPA
- Notify employer of use of other performance altering substances

SAP Responsibilities

- SAP must always recommend education
- Education options include
 - Self help group
 - Community lectures
 - Drug and alcohol education courses
- Treatment options include
 - In-patient hospitalization
 - Partial in-patient treatment
 - Out-patient counseling programs

The Warning Signs of Substance Abuse

- Excessive absences and/or tardiness (especially after a weekend or holiday)
- Frequent requests for time off
- Numerous accidents without explanation
- Unsatisfactory work performance
- Non-work related visits from other employees or strangers.
- Secretive behavior, defensive attitude
- Drastic weight changes
- Marked change in mood, attitude and behavior
- Deterioration in personal grooming and hygiene

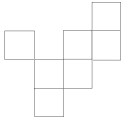


HARASSMENT IN THE WORKPLACE

Presented by:

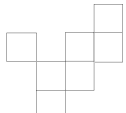
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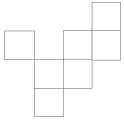
TRAINING OBJECTIVES

- ▶ **Test Your Knowledge**
- ▶ **Define Unlawful Workplace Harassment**
- ▶ **Understand, Recognize, and Avoid Inappropriate Behavior**
- ▶ **Management's Role in Preventing Discrimination and Sexual Harassment in the Workplace**



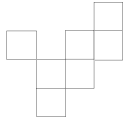
EMPLOYMENT DISCRIMINATION AND WORKPLACE HARASSMENT IS PROHIBITED

- ▶ **Title VII of the Civil Rights Act of 1964**
- ▶ **The Americans with Disabilities Act (ADA)**
- ▶ **The Age Discrimination in Employment Act**
- ▶ **Rehabilitation Act**
- ▶ **Equal Pay Act**
- ▶ **New York State Human Rights Law**



PROTECTED CLASSES INCLUDE:

- Age
- Sexual Orientation
- Gender
- Disability
- National Origin
- Veteran Status
- Military Status
- Arrest or Conviction Record
- Pregnancy
- Race
- Color
- Marital Status
- Religion
- Genetic Predisposition
- Domestic Violence
Victim Status

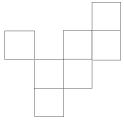


TWO TYPES OF UNLAWFUL WORKPLACE HARASSMENT

**Quid Pro Quo Sexual
Harassment**

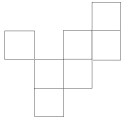
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Hostile Work Environment



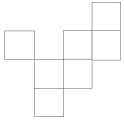
QUID PRO QUO SEXUAL HARASSMENT

- **Latin Term Meaning**
“Something for Something”
- **Involves A Supervisor**
- **Involves Power**



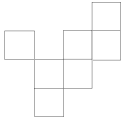
QUID PRO QUO SEXUAL HARASSMENT EXAMPLES

- **Supervisor requests sexual favors from a subordinate in exchange for a pay increase**
- **Supervisor re-assigns a subordinate to a less desirable work shift because she ends their romantic relationship**
- **Supervisor implies that a subordinate will get a promotion if he agrees to go on a date with the supervisor**



HOSTILE WORK ENVIRONMENT

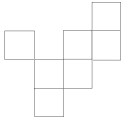
**Unwanted or Unwelcome Words
or Actions that Focus on a
Person's Sexuality or Target a
Member of a Protected Class**



HOSTILE WORK ENVIRONMENT

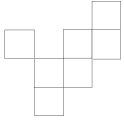
To Be Illegal, Conduct Must Be:

- **Unwelcome and Unwanted**
- **Repeated or a Pattern....Unless Single Event is Unusually Severe**
- **Severe and Pervasive**
- **Conduct that unreasonably interferes with victim's ability to work or creates an intimidating or offensive environment**



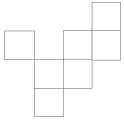
Title VII Is Not Meant To Be General Civility Code:

- Inappropriate conduct that does not rise to the level of being unlawful can still be a violation of the Employer's Policy.



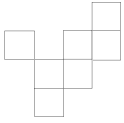
Did You Know...?

Almost every charge of harassment involves the use of foul language or a derogatory gender, racial, or religious description.



E-mail is like toxic waste – it never goes away!!

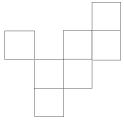
- Sexually or racially oriented, offensive or threatening e-mails, text messages, letters, or graffiti.
- Cyber-bullying or harassment of a co-worker or supervisor via voicemail, e-mail, or social media such as Facebook.



HOSTILE WORK ENVIRONMENT EXAMPLES

Verbal:

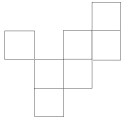
- **Using Words Like Honey, Sweetie, Hunk, Dear, or Babe**
- **Using the “N” Word or other Racially Offensive Words**
- **Racial or Sexual Jokes, Slurs, Innuendoes or Stories**
- **Offensive Comments about a Person’s Body, Color, Race, Religion, Disability, Age, Gender or Sexual Orientation**



HOSTILE WORK ENVIRONMENT EXAMPLES

Physical:

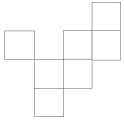
- **Unwelcome Hugging, Massaging, Rubbing, or Patting**
- **Groping**
- **Hands-on Contact or Other Forms of Aggression**
- **Pushing, Shoving, Tripping or Intentionally Blocking Someone's Path**



HOSTILE WORK ENVIRONMENT EXAMPLES

Visual:

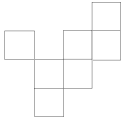
- **Sexually Suggestive or Racially Offensive Photos, Calendars, Cartoons, Pictures or Objects**
- **Pornographic Web Sites or Screensavers**



HOSTILE WORK ENVIRONMENT EXAMPLES

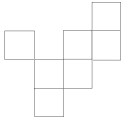
Non-Verbal or Body Language:

- **Leering, Staring or Elevator Eyes**
- **Obscene Gestures**
- **Whistling, Cat Calls**
- **Smacking or Licking Lips**



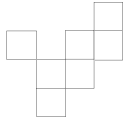
HOSTILE WORK ENVIRONMENT

- **Conduct does *Not* Need to be Aimed at Victim...Victim can be Anyone Affected by Conduct**
- **Harasser's Intent doesn't Matter...
It is the Effect on Victim that Counts**



KEY POINTS ABOUT WORKPLACE HARASSMENT

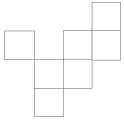
- **Can Take Place Anywhere While Officially Representing the Employer**
- **Same Gender Harassment**
- **Unlawful Harassment of Non-Employees in the Workplace is Prohibited**



DON'T ASSUME CONDUCT IS WELCOME!

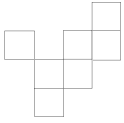
The Victim May Be:

- **Afraid of Retaliation**
- **Embarrassed**
- **Laughed at or Ostracized**
- **Concerned Job May Be in Jeopardy**



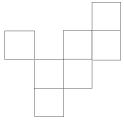
IF AN EMPLOYEE FEELS CONDUCT IS OFFENSIVE:

- **OBJECT!! Tell the Person to STOP!!**
- **Don't Suffer in Silence - Follow the
Employer's Complaint Procedure**



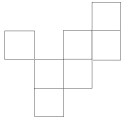
COMPLAINT PROCEDURE

- **The Complaint Procedure Should be Detailed in the Policy**
- **The Employer must Commence a Thorough and Impartial Investigation**
- **Complaint will be kept Discreet**
- **Cooperation from Witnesses is Required**



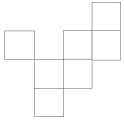
COMPLAINT PROCEDURE

- **Appropriate Corrective Action, including Disciplinary Action, if the Complaint is Substantiated**
- **The Employer must not Retaliate Against an Employee for Filing a Claim or Cooperating in an Investigation**
- **The Employer Must Prohibit Coworkers from Retaliating against any Employee who Files a Claim or Cooperates with an Investigation**



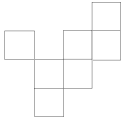
Employees' Role In Creating A Harassment Free Environment:

- Be professional and respectful at all times.
- Consider the impact your behavior may have before you speak or act.
- Test - Ask yourself the following questions:
 - Would my behavior change if a member of my family entered the room?
 - Would I want someone that I care about to be treated this way?



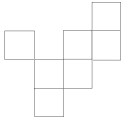
Management's Role In Creating A Harassment Free Environment:

- Know the Employer's Policy
- Communicate this policy to all employees (Employee Handbook, website, bulletin boards, staff meetings, etc.)
- Create and maintain a hostile free and proper work atmosphere



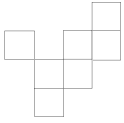
Management's Role In Creating an Harassment Free Environment:

- Be alert and aware of potential harassment situations, hostile environments and/or offensive behaviors
- Follow the Employer's complaint procedure immediately upon receipt of a complaint
- Respond quickly and effectively to any harassment complaint



Management's Role In Creating an Harassment Free Environment:

- Know and understand the proper disciplinary procedures that must be followed prior to taking any disciplinary action (e.g. Civil Service Law, Section 75; Union Disciplinary Procedures)



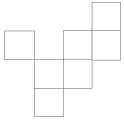
Receiving the Complaint:

STEP 1:

- Be supportive and make sure the employee knows you are taking the matter seriously

STEP 2

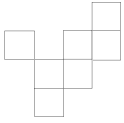
- Gather sufficient information to allow you to conduct an investigation. (Use the Employer's Complaint Form)



Receiving the Complaint:

DO ASK:

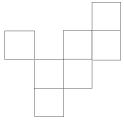
- Name of the person being accused
- The specific conduct
- How many times the conduct has occurred
- Whether there are any witnesses



Receiving the Complaint:

DO ASK:

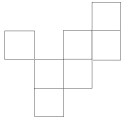
- Whether the employee knows of any other employee with similar complaints
- Whether the employee has complained about the conduct to the alleged harasser, co-workers, or others within the organization
- Whether the conduct occurs at any particular time or location such that it could be observed by you



Receiving the Complaint:

DO NOT:

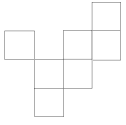
- Suggest to the employee that he or she might be asking for it
- Take the complaint lightly
- Tell the employee to ignore the behavior and not let it bother him or her
- Automatically assume the accused person is guilty
- Act like you do not believe the employee



Receiving the Complaint:

STEP 3

- Inform the employee an investigation into the matter will be conducted and that appropriate corrective will be taken if the alleged offender is found guilty
- Reinforce the Employer's Non-Discrimination and Sexual Harassment Prevention in the Workplace Policy
- Tell the employee to let you know immediately should the conduct continue



Q & A