



A place where families and businesses thrive.

CITY RECORDER USE ONLY:

AGENDA ITEM #: _____

MEETING DATE: _____

FINAL ACTION: _____

CITY COUNCIL STAFF REPORT

WORK SESSION:

TO: *City Council*

FROM: *Jesse VanderZanden, City Manager*

PROJECT TEAM: *Brenda Camilli, HR Manager*

MEETING DATE: *January 22, 2018*

SUBJECT TITLE: *Harassment Training for Elected Officials*

ACTION REQUESTED:

☐	☐ Ordinance	☐ Order	☐ Resolution	☐ Motion	☒ X	☐ Informational
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X all that apply

ISSUE STATEMENT:

To provide training to elected officials regarding illegal harassment and related policy and laws.

BACKGROUND:

This is the fourth of four training sessions the City has provided to its elected officials, which have included Oregon's Ethics laws, Meeting laws/Placing items on the agenda, Oregon's Public Records Laws, and Council Rules of Procedure. This training will cover many of the same topics as the mandatory training that was presented to all City employees this past year, including illegal discrimination, harassment, retaliation, and related laws and City policy. The training will be conducted by Katie Kammer, a Pre-loss Attorney with CityCounty Insurance Services (CIS), who advises CIS members on a variety of employment law issues.

On a similar note, two Spring training sessions have been scheduled with the City Attorney for all Boards and Commission members regarding the do's and don'ts of public officials including ethics, public meeting laws, campaign laws, and advocacy.

FISCAL IMPACT:

None

ATTACHMENT(s): "Harassment, Equal Employment and Other Laws That Matter to You" Training Power Point Presentation

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Harassment, Equal Employment and Other Laws That Matter to You

Katie Kammer, CIS Pre-Loss Employment Attorney



Outline

- Why are we here?
 - Common employment law claims
 - Common claims against elected officials
- Update - the City's efforts to prevent illegal conduct.
- Red Light Conduct – Illegal discrimination, harassment, and retaliation.
- Policy Primer – Be prepared if a complaint comes to you.
- Wrap-Up



Why are we here?



Legal Reasons for Training

Work environment that is free of unlawful harassment and discrimination.

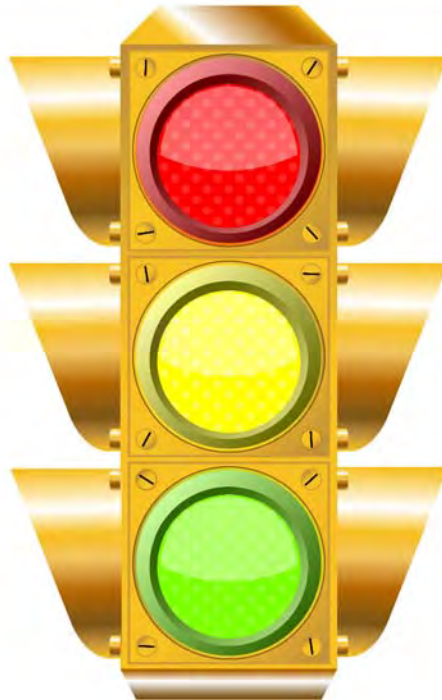


Legal Reasons for Training

- The City is *legally* responsible for the acts of:
 - Its supervisors and managers, *as well as elected officials*
 - Co-workers behaving badly (if the City knew or should have known about the bad behavior and failed to fix the problem)
 - Residents/taxpayers, vendors, and other outsiders who interact with City employees as part of the employees' jobs



**The City of
Forest Grove
has been
hard at work!**



Illegal Discrimination, Harassment, and Retaliation



Protected Classes: Who You Are

- Race
- Color
- National origin
- Sex
- Pregnancy
- Disability
- Religion
- Age (over 18 in Oregon)
- Marital status
- Family relationship
- Injured worker (WC)
- Sexual orientation
 - Gender identity
 - Gender expression
- Genetic background



Protected Classes: What You Did/Do

- Served in the military
- Used protected leave (sick leave, military, family, legislative, bone marrow, jury duty)
- Opposed unlawful practices
- Associated with a member of a protected class
- Had your wages garnished
- Expunged juvenile record
- Filed bankruptcy
- Testified in criminal or civil proceedings
- Used tobacco in off duty hours



What is “Unlawful Discrimination”?

- To treat someone differently because of their protected class status; **OR**
- “Hostile work environment”; **OR**
- Retaliation



Deep Dive – Sex Discrimination

- Sex Discrimination includes discrimination:
 - Sex (both male and female)
 - Because of pregnancy, childbirth, and related medical conditions.
- Covers all aspects of employment, including decisions about pay, assignments, promotions, training, and benefits!



Deep Dive – National Origin Discrimination

- National Origin Discrimination includes discrimination:
 - Because of an individual's, or his or her ancestor's, place of origin
 - Because of their national origin group
- Covers perception and association. It is illegal to discriminate against someone perceived to be from a certain country whether they are or not



Discrimination: Not Just in Firing

Federal and Oregon law prohibits discrimination in:

- Recruiting, interviewing, hiring
- Compensation
- Benefits
- Terms or conditions of employment
 - Includes trainings, advancement opportunities
 - Includes exclusionary invitations (business-social invitations that are not inclusive of all employees)
- Termination (includes “constructive” discharge)



Harassment on the Basis of Any Protected Class

- Harassment on the basis of national origin, pregnancy, age, religion, sexual orientation **or any other “protected class”** violates the law (and the City’s policies) if:
 - The harassment creates an intimidating, hostile or offensive working environment; or
 - It interferes with work performance/results in a “bad” employment action.



What is a “Hostile Work Environment”?

Harassment violates the law, and creates a “hostile work environment,” if it involves:

- Discriminatory treatment on the basis of
 - Any **protected class status**; or
 - Any **protected activity** under the anti-discrimination or other employment law statutes



What is a “Hostile Work Environment”?

- The law does not prohibit simple teasing or offhand comments – this is not a “civility code”
- The conduct must be **so objectively offensive** as to alter the conditions of the victim’s employment”
 - The conditions of employment are altered only if the harassment (based on protected class status):
 - Culminated in a tangible employment action; or
 - Was **sufficiently severe or pervasive** to create a hostile work environment



Single Incident Harassment

A single episode, or a single comment, can create an unlawful hostile work environment if it is:

- Severe
- Unusually demeaning
- Physical, particularly where threatening

More Importantly: One incident/comment violates the City's policies!



Examples of “National Origin Harassment”

- Offensive or derogatory comments
 - Ethnic slurs
 - Using derogatory names
 - Making fun of someone's accent or the way they say particular words
- Relying on cultural, ethnic, or racial stereotypes

Note: If the joke is so good, will you enjoy repeating it to management, plaintiff's counsel, jury...?



Other Examples of Harassment

Based on:

- Sexual orientation
 - Homophobic jokes or slurs, comments about mannerisms or sexual activity
- Gender identity or expression
 - Comments about their clothes or the way they style their hair
 - Not using correct names or pronouns
 - Gender-specific dress codes



What is “Sexual Harassment”?

- **“Quid pro quo”**
 - When submission to sexual demands is a term or condition of employment (or when refusing sexual demands is a basis for employment decisions)
 - Offers to give employment benefits or let an employee keep them in exchange for sexual favors
 - One single event is enough



What is “Sexual Harassment”?

- A “**hostile work environment**”:

- Unwelcome sexual advances
- Visual or verbal or physical conduct of a sexual nature requests for sexual favors
- Includes gender-based harassment of a person of the same sex

Example: Name calling or other harassment of women because they are women can be sexual harassment



What the Cases Teach Us

- Sexual harassment can be a legal violation long before the conduct affects psychological well being
- Different people can have very different views of the conduct that may constitute sexual harassment — one person’s teasing can be another person’s “torment”
- It does not depend on the gender of the participants (men can unlawfully harass men)



Retaliation: Also Illegal Discrimination

- **What:** A bad employment action happens (termination, demotion, etc.)
- **Why:** Because the employee has:
 - Made a good-faith complaint about discrimination, unequal pay, harassment, gross mismanagement of City funds, or some other unlawful conduct; OR
 - Filed a grievance, talked to a lawyer, or filed a complaint with BOLI/EEOC or OSHA



The City of Forest Grove's Discrimination and Harassment Policies



Preventing Discrimination and Harassment

- As an elected official for the City, you must become familiar with and enforce these anti-harassment and no-discrimination policies
- Set a good example by engaging in professional, respectful behavior
- Learn to identify when an employee is raising a concern or making a complaint and understand what to do to address it (even if it is a rumor)



Reporting Discrimination and Harassment

- City policy encourages employees to report potential violations of its anti-harassment and no-discrimination policies
 - To their immediate supervisor or Human Resources
 - As soon as they believe there is an issue
- They are also told to expect that an investigation into their complaint may follow



Reporting Obligations

City employees are told to report:

- policy violations that are personal
- policy violations that they observe
- policy violations that they did not observe, but about which they have credible information

The same goes for you! Bottom Line: The City of Forest Grove wants to know.



Be Prepared

As the elected official, you need to know what to do if a report comes to you.

- Direct employee to supervisor or HR.
- Tell Brenda as soon as possible!
- Keep information confidential.
- Tell employee that he or she cannot be retaliated against for bring forward concerns.



What Happens When a Report is Made?

- The City of Forest Grove is required to investigate complaints and reports of harassment
- A typical complaint investigation may include:
 - Interviews with the persons involved (including the accused and witnesses)
 - Reviews of documents, files, printed material
 - A decision-making process to determine if the complaint or report is substantiated
 - A decision-making process to determine if discipline or corrective action is warranted



What Kind of Discipline Occurs?

- If a complaint of harassment or discrimination is substantiated:
 - The law requires discipline to ensure that the misconduct will not be repeated.
 - If the misconduct is severe, or repeated, termination is likely.



Common Claims Against Public Officials



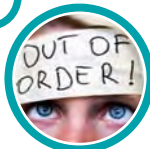
Employment
decisions



Using office for
personal gain



Failure to follow City
policies



Open meetings laws and
removing disruptive
citizens



Defamation

Conflict of
interest claims



Common Claims Against Public Officials

1. Employment decisions: termination, layoff
2. Defamation: (or, explaining how the manager is a horrible, corrupt person and you had to fire him/her on your first day)
3. Causing a “hostile work environment” for staff: (or, doing the manager’s job instead of yours)
 - Usually outside the scope of your authority
4. Failure to provide due process when terminating



Non-Monetary Litigation “Costs”

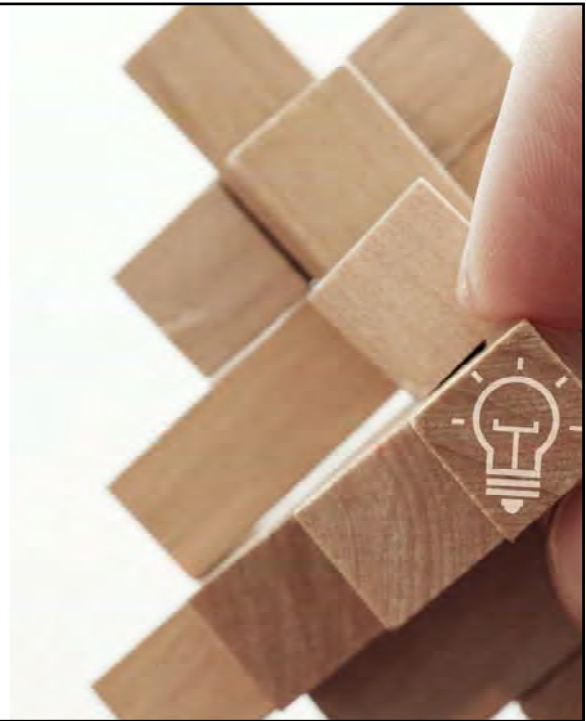
- *Time*: The unquantifiable "cost"
 - Assisting with document requests and discovery
 - Attending your deposition
 - Listening to/reviewing lawsuit updates
 - Mediation: Courts will get you involved
 - Trial
 - Spending quality time with your lawyer
- *Publicity*: The &&^!\$\$\$!! "cost"



Questions?

“... you can either ask the question
or experience the answer ...”

- Author unknown



Thank you!

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