Harassment Prevention Training for Supervisors and Officials

Planning Commissioners Academy
March 4, 2020

ILG Mission
Empower local government leaders and deliver real-world expertise to help them navigate complex issues, increase their capacity, and build trust in their communities.
ILG is Connected to Key Local Gov Groups

ILG is the non-profit training and education affiliate of…

ILG is Connected to Key Local Gov Groups

What Does ILG Do?
Promoting good government at the local level

Program Areas
- Leadership & Governance
- Sustainable Communities
- Public Engagement
- Youth & Civics Education

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- Education & Training
- Technical Assistance
- Capacity Building
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THE RESPECTFUL WORKPLACE
Civility and Harassment Avoidance Training (AB 1825/ AB 1661)

WELCOME

AGENDA

• CIVILITY
  • Defining civility
  • Causes of incivility
  • Simple civility

• HARASSMENT AVOIDANCE
  • Discrimination Law Overview
  • Sexual Harassment
  • Gender Identity/ Expression/ Orientation
  • Retaliation

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THE RESPECTFUL WORKPLACE

• WHAT DO WE MEAN BY CIVILITY?
• WHY DO WE CARE ABOUT CIVILITY?
• HOW ARE WE GOING TO SUPPORT A CULTURE OF CIVILITY?

WHAT DO WE MEAN BY “CIVILITY”??
Civility is that which “protects people from each other and yet allows them to enjoy each others company.”

Richard Sennett, *The Fall of the Public Man*

Civility is about more than being polite, although being polite is an excellent start. Civility is about being aware of other people’s feelings, and listening and seeking common ground as an initial point for dialogue when differences occur, while at the same time, recognizing that differences are enriching. Through positive, respectful communication, one person has the power to improve morale, productivity, and teamwork.

Ryerson University, “Guide to Civility”
**WIIFM? (WHAT’S IN IT FOR ME)**

- When you have a reputation for behaving civilly, the positive regard of those who work with you will increase your own self-esteem.

- Civility creates a positive working environment in which you and those around you will feel more motivated and more productive.

**WIIFM?**

- Civility promotes effective self-awareness and effective social awareness, helping to avoid emotional landmines that can have an adverse impact on your success.

- The deliberate practice of civility increases your emotional intelligence, helping you to learn to control anger and frustration and to be more attuned to the needs of others in relation to your own needs and wants.
### Causes of Incivility

**Lack of Self-Restraint**
Allowing assertiveness to become aggressiveness or exhibiting annoying behaviors to seek attention. Engaging our mouth before we engage our brain.

**Anonymity**
Studies have shown that we have less inhibition when we know we are likely not to be held accountable for our actions, such when we allow ourselves to be rude to a stranger or to voice temper on the phone or share unfavorable comments on social media.

**Stress**
Both personal and work-related stress create fatigue, frustration and depression, all of which can readily be channeled to or aimed at the individuals that we interact with on a daily basis.

**A Sense of Entitlement**
Increasingly we are victims of those who believe “each to his own,” which leads to arrogant, self-centered, self-indulgent behaviors.
CAUSES OF INCIVILITY

BIAS and DISCRIMINATION
Dismissing, alienating, or excluding a person on the basis of pre-conceived notions about his/her race, gender, religion and ability to make positive contributions to the workplace or the group.

COMPETITION and CONFLICT
Competition for scarce resources or opportunities paired with a lack of conflict management and negotiating skills can encourage defensive behaviors that impede appropriate and respectful resolution of differences.

MULTIPLE CHOICE OR TRUE/FALSE

True or False?

Anonymity can be a cause of incivility. Studies have shown that when we know we will not be held accountable, we sometimes feel more free to act inappropriately.
CAUSES OF INCIVILITY

TICKLE THE GREY MATTER

WHAT OTHER CAUSES ARE THERE FOR INCIVILITY IN THE WORKPLACE?

CONSIDER THIS

Most incivility in the workplace is unintentional.
CONSIDER THIS

Civility is all about communication – how we say things and how we hear things and the actions that we take as a consequence of that exchange.

How your message is heard depends in large part not on what you say but how you say it – your para-verbal communication.

PARA-VERBAL COMMUNICATION

Para-verbal communication refers to HOW we say something, not the actual words that we use. It is found in –

- Intonation
- Pitch
- Volume
- Emphasis
- Pacing
I didn’t know that you wanted to be on this team.

I didn’t know that you wanted to be on this team.

I didn’t know that you wanted to be on this team.

I didn’t know that you wanted to be on this team.

As much as 80% of the message that we send or receive comes from non-verbal communication.
WHY DO WE CARE ABOUT CIVILITY?

- 96% of employees report they have been the recipient of incivility at work
- 60% of employees report that they are stressed by the uncivil behavior of bosses or co-workers
- 50% of employees are afraid to say anything about incivility due to anxiety about repercussions
- 88-94% of employees have gotten even with co-workers or the organization due to unresolved issues around incivility

Christine Pearson and Christine Porath, *The Cost of Bad Behavior*

WHY DO WE CARE ABOUT CIVILITY?

Employees are affected deeply by incivility and consciously or unconsciously react to the hurt it has caused them with...

- Lower productivity
- Higher absenteeism
- Reduced engagement
- Loss of respect for “The Enablers”
  or, in the worst case scenario, by...
- Leaving the job
WHO ARE “THE ENABLERS”? 

• Supervisors who turn a blind eye to incivilities

• Managers who don’t model civil behavior

• Organizations that do not actively promote civility as a core value

WHO ARE “THE ENABLERS”?

• Co-workers who don’t call out incivility when they see it

• Each of us when we fail in ways – small and big – to behave civilly toward others
Civility dictates that we do not treat others harmfully; further it dictates that we do not allow others to treat us harmfully, either.

P.M. Forni, *Choosing Civility: The Twenty-Five Rules of Considerate Conduct*

**TICKLE THE GREY MATTER**

Take a few moments to think of a time when you witnessed, or were the target of, incivility and consider how you responded.
GOSSIP IS TOXIC WASTE
IT WASTES TIME, IT WASTES ENERGY, AND IT WASTES GOOD WILL

TICKLE THE GREY MATTER
Take a few moments to think of a past or current situation with a co-worker where you were or are challenged to behave civilly toward him/her.
SIMPLE CIVILITIES

Demonstrate Respect

• Say “good morning” to each of your co-workers each day

• Keep your cell phone on vibrate or silent while you are working and make personal phone calls in private

• Avoid profanity and disparaging comments

SIMPLE CIVILITIES

Demonstrate Respect

• Make sure to always use a positive tone

• Clean up your own mess in shared spaces and keep your own workspace tidy

• Monitor your volume and that of your iPod and radio
SIMPLE CIVILITIES

Demonstrate Respect

• Practice active listening

• Be considerate of others’ belongings, workspaces, and privacy

• Use your co-workers time wisely

SIMPLE CIVILITIES

Demonstrate Respect

Do not forget small kindesses, and do not remember small faults.

Chinese proverb
SIMPLE CIVILITIES

Demonstrate Respect

BE ON TIME & BE PRESENT

SIMPLE CIVILITIES

THINGS NOT TO DO

• Don’t interrupt no matter what you have to say

• Don’t roll your eyes no matter how idiotic you think the other person is being

• Don’t use email to avoid a problem
SIMPLE CIVILITIES

THINGS NOT TO DO

• If you wouldn't be talking while someone else is talking, don't be texting either

• Don't exclude others

• Don't litter – with “trash” talk or thoughtless words

SIMPLE CIVILITIES

THINGS NOT TO DO

• Fail to make returning phone calls, emails, or correspondence a priority

• Demand attention from subordinates outside of work hours

• Fail to recognize or purposefully discount the contributions of others
CIVILITY CORE COMPETENCIES

TO BE CIVIL IS TO BE:

HONEST - AUTHENTIC
EMPATHETIC
CURIOUS
PROACTIVE
COLLABORATIVE
POSITIVE
RESPECTFUL
MINDFUL IN WORD AND ACTION

DEALING WITH DIFFICULT PERSONALITIES

Most of us respond to difficult people by focusing on ways to minimize the stress that they cause us rather than exploring how to create a more workable relationship and eliminate the stress entirely.
DEALING WITH DIFFICULT PERSONALITIES

Left to our own first inclinations, we are likely to avoid dealing with difficult personalities and to tolerate or even accept the inevitable dysfunctional relationship.

How many times have you said or heard, “Oh, that’s just his way of acting out; He’ll get over it” or something equally excusing of toxic behavior?

DEALING WITH DIFFICULT PERSONALITIES

THAT IS JUST WRONG, WRONG, WRONG.

He will not “get over it,” will continue to behave badly, and will continue to poison the worksite.

You will not “get over it,” will continue to be diminished by the intolerable behavior.
DEALING WITH DIFFICULT PERSONALITIES

Civility provides the best avenue for calling difficult personalities to account for their unacceptable behavior. It does so by creating a positive atmosphere that allows you to...

...set and negotiate boundaries
and
...provide feedback regarding more acceptable ways to interact with others

“THE RESPECTFUL WORKPLACE”

I cannot say whether things will get better if we change; what I can say is that they must change if they are to get better.

Georg C. Lichtenberg
"THE RESPECTFUL WORKPLACE"

IF NOT YOU, THEN WHO?
IF NOT NOW, THEN WHEN?
HILLEL THE ELDER

"THE RESPECTFUL WORKPLACE"

BE THE CHANGE YOU WANT TO SEE IN OTHERS
MAHATMA GANDHI
“THE RESPECTFUL WORKPLACE”

PROUD TO BE A

CIVILITY SERVANT

SEXUAL HARASSMENT IN THE
#METOO ERA
THE NEW TRAINING REQUIREMENTS
AB1825 AND BEYOND

- California continues to lead the nation in training requirements
  - AB 1825 – Harassment Avoidance
  - AB 2053 – Abusive Conduct
  - AB 1661 – Extends to Elected & Appointed
  - SB 396 – Gender Identity & Sexual Orientation
  - Pending: Broader scope, Bystander Intervention & Respectful Workplace

- Training, Policies & Complaint Procedures

DISCRIMINATION LAWS
GENERAL PRINCIPLE

- No employer may treat an employee poorly
  - Because of any protected category
  - In any way that affects “terms and conditions of employment”

- Generally this principle is embodied in Title VII of the Civil Rights Act (Federal) and the California Fair Employment and Housing Act.
### THE PROTECTED CATEGORIES - CALIFORNIA EDITION -

- Race
- National Origin
- Color
- Ancestry
- Sex
- Sexual Orientation
- Gender Identity/Expression
- Age
- Physical and Mental Disability
- Religious Creed
- Medical Condition
- Marital Status
- Veteran

California Fair Employment and Housing Act, Gov't. Code § 12900

### THE PROTECTED CATEGORIES - FEDERAL EDITION -

- **Age** - 40 and older *(ADEA)* 29 U.S.C. § 621
- **Color** *(Title VII)*
- **National Origin** *(Title VII)*
- **Gender** *(Equal Pay Act)* 29 U.S.C. § 206(d), *(Title VII)*
- **Religion** *(Title VII)*
- **Mental or physical disability** *(ADA)* 42 U.S.C. § 12101 et seq.
MULTIPLE CHOICE OR TRUE/FALSE

**Multiple Choice:**

Which of the following is **not** a protected category?

A. Sexual Orientation  
B. Political Party Affiliation  
C. Disability  
D. Gender Identity

*At the conclusion of the webinar, please email all multiple choice answers to events@bbklaw.com.*

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TERMS & CONDITIONS OF EMPLOYMENT

- Can Include:
  - Hours of employment
  - Pay
  - Physical setting
  - Geographic location
  - Benefits
  - Work Environment
WHY IS SEXUAL HARASSMENT SO PREVALENT?

CULTURAL ACCEPTANCE OF PREDATORY BEHAVIOR

In my body, where the shame gland should be, there is a second awesome gland.

True story.
CULTURAL ACCEPTANCE OF PREDATORY BEHAVIOR

THE 2019 OFFICE ROMANCE SURVEY
ARE WE SURPRISED BY THE RESULTS?

- 58% of workers have had an office romance.
  - 72% said they would have another!
- 64% of workers kept their office romance secret.
- 31% have engaged in “random hookups” with colleagues.
- 37% have avoided a potential workplace romance.
- 48% know of co-workers who’ve had affairs.
- 96% think that workplace romances are acceptable in some form (28% say all are acceptable).
  - Only 43% think it is unacceptable for different levels.
THE TWO KINDS OF SEXUAL HARASSMENT

- Sexual harassment is a form of sex-based discrimination
- There are two kinds of sexual harassment:
  - Quid Pro Quo Harassment
  - Hostile Work Environment

QUID PRO QUO “SOMETHING FOR SOMETHING”

- QUID PRO QUO:
  - Is it sexual?
  - Is it unwelcome?
  - Is it a condition of employment?
SEXUALLY CHARGED HOSTILE WORK ENVIRONMENT

• NOT “HOSTILE” IN THE COMMON SENSE

• SEXUALLY CHARGED HOSTILE WORK ENVIRONMENT:
  o Is it sexual?
  o Is it unwelcome?
  o Does it unreasonably interfere with the employee’s job performance?

CACI 2524

SEXUALLY CHARGED HOSTILE WORK ENVIRONMENT

• Factors considered by the courts:
  o SEVERITY - verbal, physical, or both;
  o PERVASIVENESS - Frequency of conduct;
  o PRESENCE OF AUTHORITY - Whether the alleged harasser was a co-worker or supervisor (comparative authority of the parties involved);
  o CULTURE OF HARASSMENT - Who participated;
  o SCOPE OF VICTIM CLASS - Whether the conduct was directed at more than one individual.
MULTIPLE CHOICE OR TRUE/FALSE

Multiple Choice:

Which of the following is **not** a factor used to determine whether the conduct unreasonably interfered with an employee’s job?

A. Severity
B. Pervasiveness
C. Level of Humor
D. Scope of the Victim Class

IS IT SEXUAL?
IS IT UNWELCOME?

• The challenged conduct must be unwelcome in the sense that the employee did not:
  o Solicit; or
  o Incite it

_Henson v. City of Dundee_ (11th Cir. 1982) 682 F.2d 897.

IS IT UNWELCOME?

• Ken likes to make “_that’s what she said_” jokes every day, creating a sexual innuendo anytime anyone discusses a hard task. He thinks everyone loves his jokes. His subordinate, Bill, files a complaint against Ken after he gets written up for excessive tardies.

• Joey alleges his manager, Shane, created a hostile work environment by constantly joking that Joey is “gay for” his best friend and co-worker, Jim. On several occasions, Joey joked that Shane was also “gay for” their department head. Joey filed a sexual harassment charge the day after he was transferred to a new department.
SB 396 – GENDER IDENTITY, GENDER EXPRESSION & SEXUAL ORIENTATION

- **Sexual Orientation:** In the prior hypothetical, is Joey subject to sexual harassment or sexual orientation harassment? Would it matter whether Joey identifies as homosexual?

- **Gender Identity & Expression:** Pat is an employee who is transitioning from male to female. She has requested that the employer use the female pronoun in referring to her and that she be identified as “Patricia.” In addition, she has grieved a write up given by her supervisor for her long hair, which is in violation of the grooming standards applicable to male employees. The supervisor would like to require “Pat” to get a doctor’s note to “prove he has this gender identity issue.”

STOP MAKING PEOPLE FEEL UNCOMFORTABLE!!!

Is your conduct **UNWELCOME**?
Ask yourself the following:

- Is there equal power between me & the person I’m interacting with?
- Is there equal initiation & participation?
- Does the person I’m interacting with give any visual signs that they are not comfortable with my conduct?
TYPICAL EXAMPLES OF SEXUAL HARASSMENT

**Generally:** Unwelcome and sexually charged written items, verbal statements, or physical contact.

**Written:** Letters, emails, text messages, social media posts.

**Verbal:** Sexual comments, slurs, jokes, sexual advances or propositions (even if in jest).

**Visual:** Leering, hate stares, gestures, displays, pictures, cartoons, or graffiti.

**Physical:** Unwelcome touching, massages, or blocking movement.

EXPRESSING INTEREST IN A COWORKER

- **It is not** illegal to express romantic interest before being informed the interest is unwelcome.

- **Continuing to express** interest can create a hostile work environment.
THE HARASSER NEED NOT BE ATTRACTED TO THE VICTIM

• Can women sexually harass men?
• Can men sexually harass other men?
• Can women sexually harass other women?
• What about the person who is rude to everyone? ...the “Equal Opportunity” Harasser?
HARASSMENT BY THIRD PARTIES

• Employers have an obligation to protect employees from harassment by third parties:
  o Customers
  o Clients
  o Vendors

• The employer must take immediate corrective action once it knows or is in a position where it “should have known” of the conduct.

Case Study
IF YOU SEE OR EXPERIENCE SEXUAL HARASSMENT

• You must report the conduct immediately to Human Resources.

• Make certain the person is aware that the conduct is unwelcome.

• Do not discuss it with other employees.

• Be familiar with and follow your anti-harassment policy.

THE INVESTIGATION

Once harassment has been reported, your employer will investigate:

• Ask you questions
• Potentially ask you to put your report in writing
• Interview other employees/witnesses
• Interview the alleged harasser
• Review any relevant records
• Advise you of the results of the investigation
THE INVESTIGATION

If interviewed as part of a harassment investigation:

• Be open, honest & specific
• Answer questions thoroughly
• Ask questions – but remember that personnel matters are confidential
• Do not form opinions based on the questions
• Do not discuss the investigation with others
• Do not let your personal feelings stop you from doing what is right

THE TYPICAL POLICY PROVISIONS

• Definition of harassment
• Zero tolerance statement
• List of all protected categories
• Statement regarding who is covered
• Description of the reporting procedure
• What the company will do upon complaint
EMPLOYER LIABILITY

Harassment by non-supervisors
• Employer liable if knew or should have known and failed to take immediate corrective action.

Harassment by supervisors
• STRICT LIABILITY – Employer is strictly liable to a victimized employee for a hostile work environment created by a supervisor.

DEFENSE – OFF DUTY CONDUCT
• An employer may avoid strict liability by establishing that the harassing conduct resulted from a “completely private relationship unconnected with the employment”

DEFENSE – “REASONABLE CARE”

- California (*McGinnis* case) & Federal (*Faragher* case)
- Defense applies when no adverse action on victim and:
  - Employer took reasonable steps to prevent & correct sexual harassment in the workplace;
  - Employee unreasonably failed to use the corrective measures available; and
  - Employee’s reasonable use would have prevented the harm.

Case Study
RETALIATION

• The law prohibits employers and coworkers from retaliating against (1) anyone who complains of harassment in good faith; (2) anyone who opposes prohibited conduct; and (3) anyone participating in a harassment investigation.

• Any retaliation must be reported immediately.

• Claims of retaliation must be investigated separately the same way harassment claims are investigated.

RETALIATION

• If you are intent on disciplining or otherwise adversely impacting the complainant, then:
  o Document the legitimate business reasons;
  o Get a second opinion;
  o Be honest about the reasons for the action; and
  o Be consistent in your practices.
WHAT CAN I DO?

• Set a positive example: Be professional and respectful.
• Think twice before engaging in unprofessional banter or asking personal questions.
• Don’t assume that jokes and gestures meant to be friendly are not offensive.

WHAT CAN I DO?

• Know your policies.
• Don’t be part of or accept behavior that is offensive. Voice your concerns!
• Support people who are being harassed by cooperating in investigations & keeping them confidential.
• Do not ignore an informal complaint of harassment.
SUPERVISOR’S GUIDE

• A Supervisor Should Be Prepared To:
  o Explain policies
  o Assure the employee of our sincerity and dedication to eliminating harassment
  o Explain the investigation and follow-up procedures
  o Explain why confidentiality is important
  o Advise the employee of the significance of being honest and truthful
  o Acknowledge the employee had done the right thing by reporting harassment

“THE RESPECTFUL WORKPLACE”

TIME FOR QUESTIONS