

1



2

- **Statutory Compliance:** Training is being provided to fulfill statutory obligations and in furtherance of your employer’s commitment to proactively prevent and effectively respond to incidents of unlawful discrimination & harassment.
- **Reasons for this Training Beyond the Statutory Requirement:**
 - Protect the Workplace
 - Protect the Employer
 - Protect Employees through education



3

- **This training will teach the following:**
 - What constitutes unlawful harassment and discrimination
 - What to do if you’re being harassed or discriminated against
 - Your responsibilities in preventing harassment and discrimination



4

- A protected status is an individualized characteristic that affords protections under the various statutes.
 - Everyone has protected statuses.
- New York and Federal protected statuses are different.
- Some protected statuses are based on case law and interpretation.



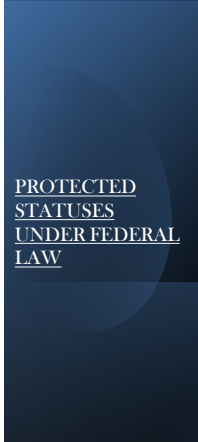
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- Harassment and discrimination are often intersectional, meaning more than one protected class could be involved. Individuals have many identities (for example, race, ability, immigration status, sex) and these can operate simultaneously in discrimination cases.
- We all bring our personal histories with us to the workplace that could impact how we interact with others. Creating a safe and equitable workplace requires all employees to be aware of how their words or actions might impact someone who has a difference experience than their own.



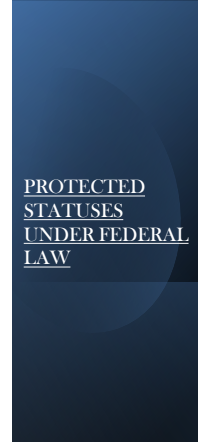
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- Executive Law §296
 - Age
 - Race (traits historically associated with race like hair texture and protective hairstyles)
 - Creed
 - Color
 - National Origin
 - Sex (Pregnancy-related protections are also afforded)
 - Sexual Orientation (SONDA 2003)
 - Gender Identity or Expression (GENDA 2019)
 - Military Status
 - Disability
 - Predisposing Genetic Characteristics
 - Familial Status
 - Marital Status
 - Status as a Victim of Domestic Violence
 - Arrest Record or Conviction Record (additional protections are also provided in Article 23-a of the Corrections Law)
 - Sincerely Held Practice of Religion
 - Citizenship/Immigration Status



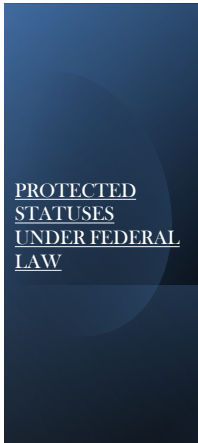
- Title VII (Civil Rights Act of 1964)*
 - Sex, which - based on caselaw - includes:
 - Pregnancy
 - Gender Identity (2020)
 - Sexual Orientation (2020)
 - Race
 - Color
 - Religion/Creed
 - National Origin
- *Applicable to public entities and employers having more than 15 employees.

7



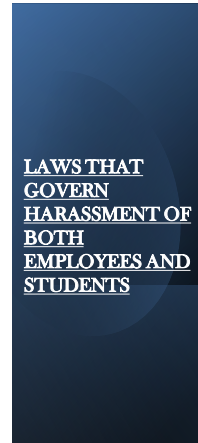
- Equal Pay Act
 - Prohibits sex-based wage discrimination between men and women in the same establishment who perform jobs that require substantially equal skill, effort and responsibility under similar working conditions.
- Pregnancy Discrimination Act
 - Prohibits discrimination based on pregnancy, childbirth, or other conditions related to pregnancy or childbirth.
- Genetic Information Non-discrimination Act
 - Prohibits discrimination based on genetic information.
 - Includes discrimination based on:
 - An individual's genetic testing
 - Information related to the manifestation of diseases or disorders in an individual's family
 - Genetic information of a related fetus

8



- Age Discrimination in Employment Act
 - Prohibits discrimination of workers in the protected age group.
- The Americans with Disabilities Act ("ADA")
 - Prohibits discrimination of workers on the basis of a disability or illness.

9



- State**
- Dignity for All Students Act (DASA)
 - Students only, all forms of discrimination and harassment.
 - New York State Human Rights Law
 - Employees.
 - Students too, since 2019.
 - All forms of discrimination and harassment.
- Federal**
- Title IX
 - Students and employees.
 - Sexual and gender-based discrimination and harassment, including sexual orientation and gender identity/expression.
 - Title VII
 - Employees only.
 - All forms of discrimination and harassment.
 - ADA & 504
 - Students and employees.
 - Discrimination and harassment based on disability.

10



- Some of the various forms of discrimination require a showing that the employee was subjected to a materially adverse employment action.
- What is an adverse employment action?
 - Termination
 - Demotion
 - Being passed over for a promotion
 - Certain undesirable reassignments
 - Not receiving raises or bonuses
- What is not an adverse employment action?
 - Being issued a counseling memo.
 - Actions taken consistent with job descriptions that aren't objectively negative or tied to an improper motivation

11



- Prohibitions:
 - Discrimination against a person because of their age with respect to any term, condition, or privilege of employment, including hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training
- Elements:
 - Inclusion in the protected age group (40 or older)
 - The individual was qualified for the position
 - The individual suffered a materially adverse employment action
 - The circumstances give rise to an inference of discrimination

12



- NY Executive Law and some Federal Laws require providing a reasonable accommodation for:
 - Known disabilities
 - Pregnancy-related conditions
 - Sincerely held religious practices or observances
- In essence, a reasonable accommodation is seeking to be relieved from a certain policy
- There is no obligation to grant an accommodation:
 - That creates an undue hardship on the employer
 - The excuses the performance of an essential duty
- Not all accommodations are “reasonable.”

13



- The ADA prohibits:
 - Discrimination of a “qualified employee” based on a “qualifying disability” (one that substantially limits a “major life activity” or a “major bodily function”).
 - A “qualified employee” (or applicant) is an individual who – with or without a reasonable accommodation – could complete the essential functions of the position.
 - If an individual is unable to perform the essential functions of a position, they do not need to be hired.
 - Failing to provide a reasonable accommodation for the known disabilities of a qualified employee/applicant.
 - An accommodation is not reasonable if it creates an undue hardship.
 - An accommodation isn’t automatically deemed reasonable just because a medical provider has suggested it.

14



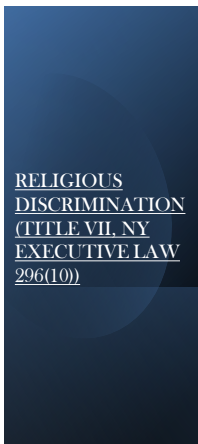
- The ADA process:
 - Request
 - The employee requests a reasonable accommodation.
 - Verbally or in writing under the law (employer can request the employee fill out a form after making a verbal request).
 - Elements of a request
 - Disclosing a potential Disability
 - Requesting relief from a policy
 - Disability is making it difficult to comply with the policy
 - Supervisors are responsible for recognizing requests and processing the request if they receive it
 - Review
 - During the review, the employer determines whether there is enough information to determine whether a qualified disability exists. If not, further information can be obtained to make that determination, including requesting the employee provide a medical certification from their medical professional.

15



- The ADA process Cont.:
 - Interactive Process
 - Employer has a minimum obligation to engage in the interactive process by discussing the accommodation request.
 - Allows the flow of information to determine what accommodation is actually needed and what would be reasonable
 - May include going back to the medical provider to determine if an accommodation discussed would be adequate.
 - Meant to be ongoing.
 - Reasonable Accommodation
 - Employee is provided a determination by the employer regarding what it views as a reasonable accommodation.
 - An employer does not need to provide a reasonable accommodation if it would create an undue hardship.
 - An employer may, but does not need to, accommodate an employee seeking to be relieved from an essential function.
 - Must still go through the interactive process.
 - There can be follow up
 - With the employee
 - With their medical provider if needed (recertification)

16



- An employer cannot:
 - Discriminate against or harass an individual because of their religion.
 - Creating hostile work environments
 - Denying a leave request solely due to their sincerely held religious observance or belief
 - Impose a requirement that would require a person to forego or violate a sincerely held religious observance or practice
 - Unless relief from the requirement would result in an undue hardship
 - Common examples: Absences on sabbath or holy days

17



- Established when the granting of a reasonable accommodation would cause significant expense or difficulty
 - Economic hardship factors: costs associated with loss of productivity, employer size and operating costs, the number of individuals affected if the accommodation was granted, and the need to hire additional staff or have other staff cover.
 - Interference with a bona fide seniority system (based on practice or collective bargaining agreement).
 - Interference with safety policies.
 - Interference with the efficient operation of the workplace.
 - The result of an inability to perform essential job functions.
- The employer has the burden of demonstrating an undue hardship.

18



19

- Any unwelcome conduct based on an individual's protected characteristic when:
 - The purpose or effect of the behavior interferes with an individual's work performance or creates a hostile work environment;
 - Employment depends on accepting the unwelcome behavior; or
 - Employment decisions are based on an individual's acceptance or rejection of the behavior.
- Discriminatory practices:
 - Harassment because of protected status
 - Retaliation
 - Employment decisions resulting from stereotypes or assumptions of individual characteristics
 - Taking action against an individual due to their association/marriage/friendship with an individual under a protected status



20

- Under New York State law, unlike Federal law, harassment need not be "severe or pervasive" to be unlawful.
- Under New York's standard, any harassing conduct can be unlawful if it rises above "petty slights or trivial inconveniences."
- Generally, any behavior in which an employee or covered individual is treated worse because of their protected characteristic is considered harassing or discriminatory behavior.
- Intent does not affect whether behavior is harassment.



21

- Elements
 - Unwelcome Behavior; and
 - Quid Pro Quo harassment or Hostile Work Environment harassment



22

- To establish a claim for unlawful harassment there must be a showing of unwelcome conduct.
- An individual who participates in, welcomes, or encourages behavior will be unable to make such a showing.
- Third party exposure to such conduct may be unwelcome to the third-party.
 - KNOW YOUR AUDIENCE AND SURROUNDINGS!
- Behavior may be welcome at one point, but that may change.



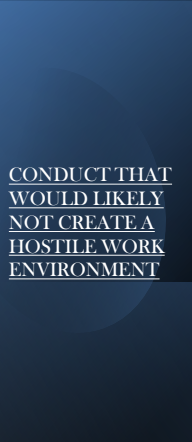
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- Unwelcome and/or inappropriate conduct based on a protected characteristic that has the purpose or the effect of:
 - Unreasonably interfering with an individual's employment, work performance
 - OR
 - Creating an intimidating, hostile or offensive work environment
 - Severity
 - Frequency *
 - Reasonable person perspective (objective and subjective standard - a reasonable person would find the environment to be abusive/hostile and the victim must view it as abusive and hostile)
- New York Law - Petty Slight and Trivial Inconvenience



24

- Unwelcome and/or inappropriate conduct reasonably perceived as offensive:
 - Use of stereotypes or epithets targeting a specific protected class
 - Visual displays in the workplace of discriminatory or sexually-related pictures, articles, calendars, jokes, or cartoons
 - Interference with a person's duties or performance because of their protected status.



25

- Welcome behavior
- Romantic relationships of a consensual nature
- Bullying (conduct unrelated to protected status)



26

- Occurs when a person in authority trades, or tries to trade, employment benefits or educational benefits for sexual favors.
- Always involves an imbalance of power between a victim and someone with authority who can grant or withhold employment or educational benefits.
 - Often between a supervisor and a subordinate employee, but not always.



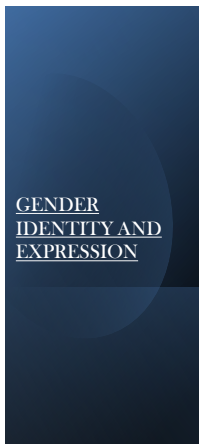
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- Sexual harassment:
 - Is a form of sex discrimination and is unlawful
 - Includes harassment “**ON THE BASIS OF**” sex, sexual orientation, self-identified or perceived sex, gender expression (real or perceived), gender identity and the status of being transgender.
 - Is not limited to sexual contact, touching or expressions of a sexually suggestive nature
 - Is unlawful when it subjects an individual to inferior terms, conditions, or privileges of employment.
- This may include:
 - Touching, discussions of a sexual nature, inappropriate remarks or innuendo, displays, emails, publications, and other depictions.



28

- Understanding gender diversity is essential to recognizing sexual harassment.
- Pursuant to NY Statute and Federal caselaw applying Title VII, discrimination on the basis of gender is unlawful.
- Important Definitions:
 - Biological Sex: The sex assigned at birth.
 - Gender: Behavioral, psychological, social and cultural aspects of being male/female or masculine/feminine.
 - Gender Identity: How the person identifies in relation to their inherent sense of being male/female, masculine/feminine.
 - Gender Expression: The outward appearance of an individual based on the behaviors associated with their gender identity.
 - Gender Fluidity: A concept that an individual’s gender identity or expression may fluctuate



29

- Though there are many gender identities, the three most common ways people identify are:
 - Cisgender: a person whose gender identity aligns with the sex they were assigned at birth.
 - Transgender: a person whose gender identity is different than the sex they were assigned at birth.
 - Non-Binary: a person who does not identify exclusively as a man or a woman. Some may identify as transgender, but not all do.



30

- As a result of an individual’s gender identity, a person may wish to be referred to by a certain pronoun or name.
- The law requires utilizing such preferred pronoun or name.
- Occasional and accidental misuse of a preferred pronoun or name is not unlawful, but an intentional misuse is.
 - Once you have knowledge, your obligation begins.



31

- Harassing a person because that person does not conform to gender stereotypes is sexual harassment.
 - Note: Harassment can be perpetrated by individuals of the same sex.
- Harassment because someone is performing a job that is usually or was previously performed mostly by persons of a different sex is sex discrimination.



32

- Price Waterhouse v. Hopkins, 490 U.S. 228 (1989)
- Quotes:
 - “Macho”
 - “A lady using foul language”
 - “Overcompensated for being a woman”
 - Needs a “course at charm school”
 - “Masculine”
 - According to the employer, she needed to “walk more femininely, talk more femininely, dress more femininely, wear make-up, have her hair styled, and wear jewelry.”
- Holding: “an employer who acts on the basis of a belief that a woman cannot be aggressive, or that she must not be, has acted on the basis of gender.”



33

- **ANYONE**
 - Sexual harassment can be perpetrated between members of opposite genders, or members of the same gender.
 - The perpetrator may be anyone, including but not limited to a co-worker, a supervisor, a visitor, an intern, an independent contractor, anyone who conducts business with your employer.
 - The conduct need not be motivated by sexual desire to constitute sexual harassment.



34

- **ANYONE**
 - The victim may be anyone, including but not limited to a co-worker, an intern, a supervisor, a visitor, an independent contractor, anyone who conducts business with your employer.



35

- **ANYWHERE**
 - Can occur whenever and wherever employees are fulfilling their work responsibilities.
 - Can occur through interactions during work hours and off employer owned-property.
 - Can occur through electronic communications, both through your employer’s network and personal devices:
 - Text messages;
 - Email;
 - Social networking sites.



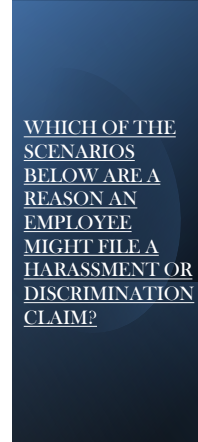
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- Never assume a situation is “one & done.”
- Harassment does not have to be “severe or pervasive” to be legally actionable. Now, any conduct that subjects an individual to inferior terms, conditions or privileges of employment or education because of the individual’s membership in a protected category may constitute legally actionable harassment.



- Prohibited sexual harassment includes, but is not limited to, unwelcome:
 - Sexual advances;
 - Flirting;
 - Propositions;
 - Requests for dates;
 - Sex stereotyping;
 - Spoken or written remarks of a sexual nature (whether directed to an individual or a group);
 - Leering;
 - Sexually explicit, offensive, or gender-based jokes and comments;
 - Sexual or gender-based comments about an individual or an individual's appearance;
 - Sexually suggestive visual displays (cartoons, posters or calendars, and electronic images); or
 - Physical contact or sexual assault.

37



- A patient harasses his at-home caregiver.
- A customer asks a waitress to remove her mask so he can decide how much to tip.
- An employee frequently comments with discriminatory language on a coworker's social media posts.
- An employee gets handsy with his colleague at a hotel bar during a conference.
- A copy repair person tells jokes that are degrading toward women while fixing the copier.
- Cleaners employed by the building an organization rents space in discuss their sexual prowess loudly.
- A hotel guest gropes a housekeeper as she walks by.

38



- CORRECT ANSWER:
 - All scenarios described in the last slide should be reported!

39



- If possible, confront the harasser. This is not required, but sometimes this act may end the conduct.
- Report the harassment.
- Follow up on your complaint.

40



- Control your own conduct
- Report harassment
 - Supervisors are required by law to immediately report any complaints of discrimination and/or harassment or any conduct that they witness or are aware of which may constitute discrimination or harassment. NO exceptions!
 - Supervisors may be subject to discipline and/or liability for failing to report suspected discrimination or harassment or otherwise knowingly allowing discrimination or harassment to continue.
 - Conduct of supervisors can lead to liability for the District, which is why this requirement is taken seriously.
- Cooperate in investigations

41



- **Bystander:** An individual who observes harassment or discrimination. They are not directly involved but have a choice to intervene, speak up or do something about it.
 - Intervene to stop events before they happen;
 - Intervene while they are happening;
 - Deal with the outcome after.

42

BYSTANDER INTERVENTION

- Interrupt the harassment by engaging with the individual being harassed and distracting them from the harassing behavior.
- Ask a third-party to help intervene in the harassment.
- Record or take notes on the harassment incident to benefit a future investigation.
- Check in with the person who has been harassed after the incident, see how they are feeling and let them know the behavior was not ok.
- Confront the harassers and name the behavior as inappropriate only when you feel safe.

43

HARASSMENT OF A STUDENT

- Any employee who witnesses or otherwise becomes aware of what might be considered harassment of a student must immediately notify the building principal and/or the Title IX Coordinator.
- Employees are strongly encouraged to report any incidents of harassment involving a co-worker.
- **If you see something, say something.**

44

UNLAWFUL RETALIATION

- It is unlawful to retaliate against an individual who has:
 - Made a good faith complaint of harassment or discrimination - **even if the findings are unfounded;**
 - Participated in the investigation of such a complaint (i.e. a witness); or
 - Opposed conduct that is reasonably believed to violate anti-discrimination laws.
- Any action to alter an employee's terms and conditions of employment because that individual engaged in protected activities is retaliation.
- Examples include (but are not limited to):
 - Sudden changes in work schedule or work location
 - Reduced hours or the assignment to less desirable shifts
 - Publicly releasing an employee's personnel files
- Retaliation by a student may result in suspension or other disciplinary action under the Code of Conduct.
- Any retaliation should be immediately reported to a supervisor, or the Title IX Coordinator, or a Building Principal, or the Superintendent of Schools.

45

ELEMENTS OF UNLAWFUL RETALIATION

- Element 1: Participation in a protected activity
 - Bad faith complaints are not protected.
- Element 2: An adverse employment action
- Element 3: Employer awareness of the protected activity; and
- Element 4: A causal connection between the protected activity and the adverse employment action.
- A legitimate non-retaliatory reason for the action will then need to be shown by the employer, then the employee will be allowed to demonstrate the reasons were pretextual.

46

WHAT IS NOT UNLAWFUL RETALIATION?

- A negative employment action is not retaliatory merely because it occurs after the employee engages in protected activity.
- Employees are still subject to job requirements, but managers should be sensitive to discrimination's impact when assessing job performance.

47

WHAT TO DO IF YOU HAVE A COMPLAINT?

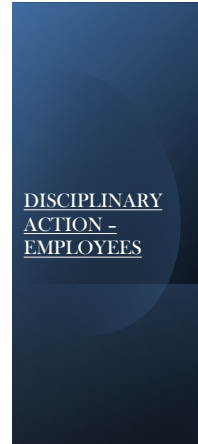
- If you experience or witness harassment or discrimination you are encouraged to report it internally.
- Behavior does not need to violate the law to violate policy.
- Complaints may be made verbally, through email, or by complaint form.
- All complaints will be treated equally regardless of how they are reported.

48



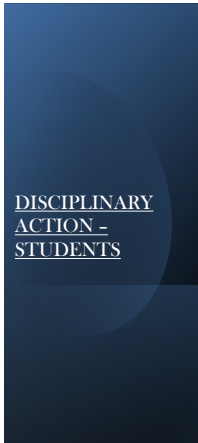
- Complaints can be made to:
 - your supervisor
 - the Title IX Coordinator
 - the Building Principal
 - the Superintendent of schools.
- An investigation of any complaint will be commenced promptly and completed as soon as possible.
- Relevant documents, emails, or phone records will be requested, preserved, and obtained.
- Interviews may be conducted.
- The investigation will be kept confidential to the extent possible.
- It is illegal to retaliate against any employee for their participation in an investigation.
- Employees found to have violated these provisions may be brought up on disciplinary charges.

49



- The District will take all actions necessary to stop harassment and/or discrimination.
- Appropriate discipline can be anything from a verbal warning to termination. Must be consistent with applicable laws and any collective bargaining agreement.
- Other remedial action may include a change in job assignments or shift schedule, and/or a “do not contact” order.

50



- Student offenders will receive in-school guidance and, if appropriate, disciplinary action in accordance with the Code of Conduct.
- Remedial action including a change of class schedule or bus transportation.
- A “do not contact” order may also be imposed.
- **Before taking any student disciplinary action for sexual harassment, building principals must first confer with the Title IX Coordinator.**
 - Different process may be required.

51



- The District has multiple anti-discrimination/anti-harassment policies and complaint resolution procedures due to differing requirements of applicable laws.
- Title IX Complaint Procedure:
 - for some but not all sex or gender-based complaints by students or employees
 - Student Harassment and Bullying Prevention and Intervention
 - Non-Discrimination Policy:
 - for all other discrimination or harassment complaints by employees

52



- Tom Olsen (Director of Pupil Personnel Services)
 - 504
 - Title IX
 - Title VI
 - Title VII
 - ADA
 - ADEA
 - NYSHRL
- Meghan Reynolds (HS/MS Assistant Principal)
 - Title IX
 - Title VI
 - Title VII
 - ADA
 - ADEA
 - NYSHRL

53



- In addition, or as an alternative, individuals may also contact:
- New York State Division of Human Rights (“DHR”)
 - www.DHR.NY.gov
 - 1-800-392-3644
 - (three years)
- Equal Employment Opportunity Commission (“EEOC”)
 - www.EEOC.gov
 - (300 days in NY)

54



1. You are required to hire an individual with a disability, even if they are unable to complete the essential functions of their position.
2. Title VII prohibits discrimination on the bases of familial status and military status.
3. Supervisors are generally the individuals engaging in quid pro quo harassment.
4. Complaints can be made to external agencies, in addition to internal complaints.
5. Employers are free from liability for the acts of customers.
6. Federal and State law prohibit discrimination on the basis of sexual orientation and gender identity.
7. You can file a complaint with your employer through multiple people.
8. A person who files a bad faith complaint has engaged in a protected activity.
9. You are not protected from retaliation if your complaint is unfounded.
10. Victims of harassment must tell a harasser to stop.
11. An employee who was counseled has suffered an adverse employment action.
12. The age of the individual replacing another employee is the only factor relevant in an age discrimination claim.

55



- Jane's coworker Ralph has just been through a divorce. He drops comments on a few occasions that he is lonely and needs to find a new girlfriend. Jane and Ralph have been friendly in the past and have had lunch together in local restaurants on many occasions. Ralph asks Jane to go on a date with him—dinner and a movie. Jane likes Ralph and agrees to go out with him.
 - When Ralph first asked Jane for a date, this was sexual harassment.
 - True or False?

56



- When Ralph first asked Jane for a date, this was sexual harassment.
 - True or False?
- FALSE: Ralph's initial comments about looking for a girlfriend and asking Jane, a coworker, for a date are not sexual harassment. Even if Jane had turned Ralph down for the first date, Ralph had done nothing wrong by asking for a date and by making occasional comments that are not sexually explicit about his personal life.

57



- Jane enjoys her date with Ralph but decides that a relationship is not a good idea. She thanks Ralph for a nice time, but explains that she does not want to have a relationship with him. Ralph waits two weeks and then starts pressuring Jane for more dates. She refuses, but Ralph does not stop. He keeps asking her to go out with him.
 - Question 2. Jane cannot complain of sexual harassment because she went on a date with Ralph.
 - True or False?

58



- Question 2. Jane cannot complain of sexual harassment because she went on a date with Ralph.
 - True or False?
- FALSE: Being friendly, going on a date, or even having a prior relationship with a coworker does not mean that a coworker has a right to behave as Ralph did toward Jane. She has to continue working with Ralph, and he must respect her wishes and not engage in behavior that has now become inappropriate for the workplace.

59



- Jane complains to her supervisor, and the supervisor (as required) reports her complaint to the person designated by her employer to receive complaints. Ralph is questioned about his behavior and he apologizes. He is instructed by the designated person to stop. Ralph stops for a while but then starts leaving little gifts for Jane on her desk with accompanying love notes. The love notes are not overtly offensive, but Ralph's behavior is starting to make Jane nervous, as she is afraid he may start stalking her.
 - Question 3. Ralph's subsequent behavior with gifts and love notes is not sexual harassment because he has stopped asking Jane for dates as instructed. He is just being nice to Jane because he likes her.
 - True or False?

60



61

- Question 3. Ralph's subsequent behavior with gifts and love notes is not sexual harassment because he has stopped asking Jane for dates as instructed. He is just being nice to Jane because he likes her.
 - True or False?
- FALSE: Jane should report Ralph's behavior. She was entitled to have effective assistance in getting Ralph to stop his inappropriate workplace behavior. Because Ralph has returned to pestering Jane after being told to stop, he could be subject to serious disciplinary action for his behavior.



62

- For additional information, visit: www.ny.gov/programs/combatting-sexual-harassment-workplace
- For anyone needing additional support, The New York State Domestic and Sexual Violence Hotline can be reached at:
 - Phone: 800-942-6906 or Text: 844-997-2121



63



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