PRESENTER'S GUIDE

"HANDLING A SEXUAL HARASSMENT INVESTIGATION"

Part of the "SAFETY MEETING KIT" Series
OUTLINE OF MAJOR PROGRAM POINTS
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The following outline summarizes the major points of information presented in the program. The outline can be used to review the program before conducting a classroom session, as well as in preparing to lead a class discussion about the program.

- Sexual harassment occurs more frequently than you would think, and it can affect a workplace environment dramatically.

- Sexual advances in the workplace are always inappropriate, but when they are unwelcome or threatening, it's also illegal. — In these cases, it's sexual harassment.

- Sexual harassment can be devastating for its victims, and it can damage the companies they work for as well. It can result in:
  — A hostile work environment.
  — Decreased productivity.
  — Increased costs.

- To protect its employees and avoid potential legal actions and hefty fines, a company must be able to recognize, investigate and resolve sexual harassment allegations, promptly and fairly.

- From a legal standpoint, "sexual harassment” is a form of sex discrimination.
  — It was made illegal in 1964 by the Civil Rights Act.

- Sexually harassing behavior includes actions that the victim finds unwanted or threatening, such as:
  — Unwelcome sexual advances.
  — Requests for sexual favors.
  — Any other verbal or physical conduct of a sexual nature.
• Blatant sexual acts are considered to be sexual harassment whenever they occur. These include:
  — Sexual assaults.
  — Touching a coworker with sexual intent.
  — Requiring an employee to engage in a sexual act in order to keep their job or advance their career.

• Less blatant types of offensive conduct can be considered to be harassing when they occur repeatedly. These can include:
  — Talking about sex or making off-color jokes.
  — Commenting on a coworker’s physical appearance.
  — Looking at someone in an "inappropriate" manner.
  — Displaying sexually "suggestive" pictures or objects.
  — Visiting pornographic websites or sending provocative emails.
  — Using foul language or making obscene gestures.

• Victims of sexual harassment can be damaged emotionally, psychologically and even physically, and can often become less productive as well.

• This type of offensive behavior can poison the work environment for others too. It can:
  — Interfere with the daily functioning of the workplace.
  — Increase absenteeism.
  — Drive employees to look for another job.

• Sexual harassment can damage the reputation of a company and may lead to significant legal costs as well.
  — So preventing this type of abusive workplace behavior should be a top priority for every company.
• Each employee is the judge of what they themselves feel to be disturbing.

• So a company must take many things into account when establishing what types of behavior and language will and will not be acceptable in the workplace.
  — These rules should be laid out in a written "sexual harassment policy".

• The policy should start with the basics, including:
  — A clear and concise definition of what constitutes sexual harassment.
  — A statement that the company will not tolerate sexual harassment by any employee, manager or contractor.

• It should also describe how a sexual harassment incident should be reported, and how it will be investigated by management.
  — The policy should list the disciplinary actions that may be taken against harassers as well.

• Make sure everyone in the department has a copy of the policy, including contractors and other temporary workers.

• Employees will also need "sexual harassment prevention" training so they know how to:
  — Recognize unacceptable behavior.
  — Report it to company management.

• Be sure to let them know that sexual harassment reports must include specific facts, such as:
  — The date and time of the incident.
  — Who was involved.
  — The names of any witnesses.
  — What happened and what was said.
  — Why the person making the report feels that the behavior was sexually harassing.
• Encourage employees to write this information down as soon as possible after a harassment incident.

• When you investigate an allegation of sexual harassment in your workplace, you have a legal and ethical responsibility to:
  — Begin your investigation promptly.
  — Follow your company’s sexual harassment policy.
  — Conduct your inquiry systematically to reach a fair resolution.

• Any type of delay could make it look like you, and the company, might not be taking sexual harassment and employee well-being seriously.

• Whether a report of harassment is submitted by a victim or someone who witnessed the abuse you should take care to respect their feelings and keep the investigation confidential.
  — Rumor and gossip will only hamper the investigation and increase discomfort and stress for those involved.
  — If someone does "catch wind" of the allegations, advise them that spreading rumors can be considered a form of abuse too.

• To investigate a sexual harassment incident you will have to "invade the privacy" of victims, witnesses and the accused to some extent.
  — You can keep this to a minimum by asking only about things that are directly related to the allegations.

• Use discretion when asking questions.
  — Take care to avoid showing bias for or against anyone, including the potential victim and the perpetrator.
• As an investigator you also have a responsibility to assess the facts impartially and not "jump" to conclusions.
  — Any perceived lack of fairness could lead to complaints being filed, even legal action.

• If one of your people comes to you with a report about sexual harassment in your department, the way you respond is very important.
  — You need to proceed systematically.
  — If you try to "wing it", any mistakes you make could come back to haunt you and your organization.

• If you need guidance, you should consult your company's sexual harassment policy, or speak to another manager or an HR representative to get their input.

• There are a few general guidelines that you should follow when you receive a report. You need to:
  — Show concern.
  — Take it seriously.
  — Keep it confidential.

• Speak with the person who makes the report in private.
  — Treat them with respect and sensitivity.
  — They shouldn't feel penalized in any way for coming forward.

• If they become emotional during the interview, you shouldn't try to quiet them by "downplaying" the incident.
  — They might think you don't take their report seriously.

• Your goal is to identify the facts in the report and assess them.
  — Thoroughly review the written record of the incident.
  — Listen carefully.
  — Ask questions.
• Start your own "paper trail" by writing up a summary based on the report and your conversation with the originator.
  — Have the victim or witness read your summary and sign it when they are satisfied that it is accurate.

• Once you have obtained the victim’s statement, your next step should be to interview the person they have accused.
  — It can be helpful to begin your conversation with them on another subject.

• Once you have established a dialog, introduce the topic of the alleged harassment.
  — You might say something like, "I'm concerned about a report I heard regarding something you did recently...".
  — Explain the allegation and ask for "their side" of the story.

• Observe the behavior of the alleged harasser.
  — Pay attention to what they say and do.
  — Take notes to record your conversation as accurately as possible.

• After the interview, create a summary of their responses and have them read and sign it.

• You may find that the descriptions of the incident given by the victim or witness and the alleged harasser are significantly different.
  — To determine what really happened you may have to "dig deeper" by speaking to other employees who have been identified as possible witnesses to the incident.
• When interviewing them, avoid providing any details about the incident that you already have.
  — Don't confuse the issue by giving them information that was supplied by others.
  — Phrase your questions generally, but without being vague.
  — You might say something like, "Have you seen people making inappropriate comments or gestures to one of your coworkers recently?"

• Obtaining information from witnesses can sometimes be difficult because many people are reluctant to "get involved". Remind them that:
  — Sexual harassment is everyone's business.
  — Eliminating it from the workplace is the best thing for your department and the company.

• The facts that you collect during a sexual harassment investigation provide the basis for resolving the issue in a way that is fair, for everyone who's involved.

• How you handle things will largely depend on two factors.
  — The severity of the harassment.
  — How often the harassment has occurred.

• Sometimes sexual harassment allegations are based on a simple misunderstanding.
  — In these cases, the "severity" is close to zero.
  — No action may be required other than making sure that everyone is aware of what really transpired.

• On the other hand, you may find the incident that you're investigating is just the "tip of the iceberg," and brings additional harassment to light.
• In any case where harassment has taken place, a company needs to demonstrate that it will not tolerate harassing behavior. At the very least, the harasser should be:
  — Instructed to "cease and desist".
  — Warned that they will face disciplinary action if their conduct does not improve.

• In situations where the harassment includes touching with sexual intent, or a manager is using their position to extort sexual favors from an employee, the harasser should probably be discharged.

• If you feel that you need help in making a final determination, consider contacting the EEOC itself.
  — They can provide information and even act as a mediator in resolving the situation, if necessary.
  — Involving the EEOC also shows that you and your company are making a "good faith" effort to "do the right thing".

• Once a harasser has been dealt with, you need to ensure that the victim is able to return to a "positive" work environment.
  — For instance, if the harasser is still with the company and the victim feels uneasy working around them, you may need to adjust work schedules or arrange a transfer to keep the two separated.
  — Be careful that you do not appear to be "punishing" the victim in any way.

*** SUMMARY ***

• Treat all reports of sexual harassment seriously, and look into the allegations promptly.

• Respect the privacy of everyone who is involved in the alleged harassment.
• Make sure that a written description of the incident is included with any sexual harassment report that you receive.

• Take care not to show bias in your investigation.

• Gather the facts and assess them before you make up your mind as to what happened.

• Looking into allegations of sexual harassment is serious business. Now that you know how the process works, and the procedures that will help to ensure a fair resolution, you can do your part to keep sexual harassment out of your workplace!