

# FIVE HR CATASTROPHES

*And how to avoid them*

WPPA Conference

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# 1. Sexual Harassment

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## Recent Headlines

- Movie producers/directors
- Hollywood in general
- Talk show hosts
- US Presidents
- And yes, government employees

# Sexual Harassment



## Quid Pro Quo:

Tangible job benefits are conditioned on the employee's submission to conduct of a sexual nature and the employee is threatened with adverse job consequences resulting from refusing to submit to the conduct.

## Other:

- Jokes
- Derogatory terms that are demeaning and gender based
- Emails, texts, touching, hugging, etc.

# Sexual Harassment



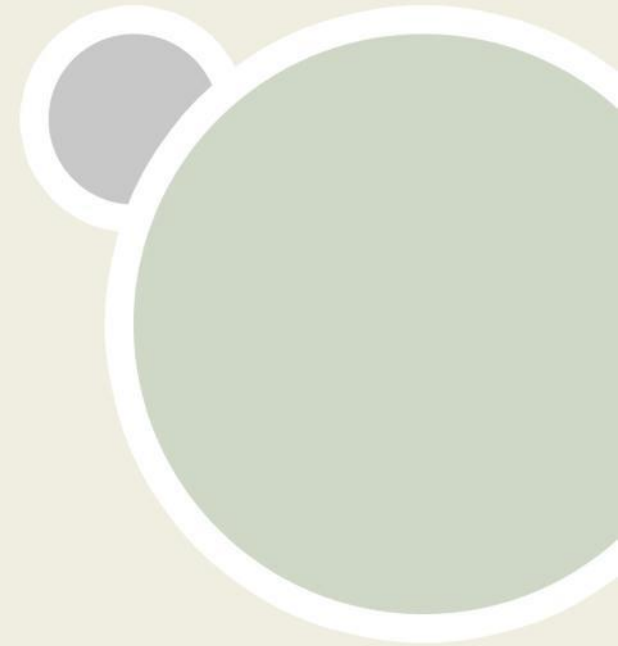
## Hostile work environment:

- Harassment so severe or pervasive that it alters the working conditions for the victim, creating an abusive environment, and
- Because of gender (or other **protected category** - age, pregnancy, race, national origin, religious beliefs, sexual orientation, disability).

# What is the employers responsibility?

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- Have a policy that prohibits harassment.
- Have a mechanism to report.
- Perform an independent investigation.
- Train staff, and document well.
- Create environment.
- Make sure it does not happen again.



## 2. Ignore it, and it will go away

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### Typical scenario:

Employee has ongoing problems, but the prior supervisor did not want to address it. A new supervisor steps in, problems continue or get worse and they want to discipline or terminate the employee.

# What is the employer's responsibility?

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- Document the performance issues.
- Be consistent with all employees.
- Have an interactive process with the employee & management.
- Provide specific examples of performance issues and specific improvements with a timeline.
- Follow your policy.

# 3. Retaliation

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To pay in kind – to get revenge

- One of the most common complaints to the EEOC
- Avoid placing unreasonable workplace restrictions on the employee who made accusation
- Found in many forms





# What is the employer's responsibility?

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- Do not take an action that would be construed as retaliatory.
- Tell others that retaliation is prohibited.
- Have a policy of no retaliation.
- Do not retaliate against someone who complains.

# 4. Accommodation



- ADA prohibits discrimination on the basis of disability in employment and requires employers to provide **reasonable** accommodation.
- **Reasonable** accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment.
- So really, **what is reasonable?**

# What is the employer's responsibility?

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- Employers can have policies that require all (not some) employees to provide a doctor's note to substantiate the need for leave.
- Engage in an **interactive process**.
- The ADA requires that employers make exceptions to their policies in order to provide reasonable accommodation, unless the employer can show that doing so will cause an **undue hardship**.

# 5. A “difficult” board member

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- Singular agenda.
- Self interest before Port’s best interest.
- Diving down into the weeds of operations.
- Forgetting they are only part of the whole.

# What is the Board's responsibility?

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- Hold one another accountable.
- Act as one body.
- Stay at the 30,000 foot level, focus on policy not operations.
- Have good board policies.
- Always ask – is this in the Port's best interest?
- Board self evaluation – how are we doing together?

# At-will Doctrine & Exceptions

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- General Rule: An employee can quit or be fired for any reason or no reason, with or without advance notice.
- Exceptions:
  - Written, oral or implied contract
  - Public policy violation
  - Discrimination
  - Retaliation

# Current and frequent claim concerns:

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## Confidentiality:

- Cannot guarantee
- Receive notice of perceived complaint, but asked to keep it quiet – doing nothing is not an option
- Public Records Act

Do not insist the complaint be in writing.

# Practical Recommendations:

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- Have good policies and procedures; review them with a critical eye
- Follow your policies and procedures
- Offer/require training
- Have good resources available – don't be afraid to ask for help
- Hire good people – do your homework
- Have good job descriptions (critical in defining the essential functions of job)
- Have meaningful, honest documented performance reviews



# Important considerations before action:

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- Does this follow our policies and procedures?
- Is this consistent with prior action to other employees?
- Is this person in a protected class?
- Is there adequate documentation to support this action?
- Has this person filed a recent complaint  
(might this action be considered retaliation?)
- Has there been an interactive approach? Has the district counseled, coached this person?

# What to do if complaint is received:



- Respond timely (to complainant, agency, etc.)
- Review your policies and procedures (employment status-at will or for cause, discipline, termination) – then follow them!
- An independent investigation may need to be done by a qualified HR professional or attorney.
- If the issue is beyond the district's ability, seek advice. If Enduris member – Contact us!

# THANK YOU!



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