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TIME'S UP FOR SEXUAL HARASSMENT
CREATING A CULTURE OF RESPECT & INCLUSION

Presented by:
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Presenter




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CLAIRE IN HR



Weekend Update Claire from HR - SNL - YouTube.wmv



What is Sexual Harassment?

"[u]nwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature"



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Types of Sexual Harassment

- Quid Pro Quo
- Hostile Work Environment



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Non employee Liability

- Liable for acts of nonemployees
- Visitors
- Vendors

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Standard of Employer Liability for Co-worker Sexual Harassment:

- Employer is liable if it knew or should have known of the harassment, unless it can be shown that it took immediate and appropriate corrective action.

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EMPLOYER'S DUTY TO EXERCISE REASONABLE CARE TO PREVENT SEXUAL HARASSMENT

- Requires employers to establish, disseminate, and enforce anti-harassment policy and complaint procedure
- distribute policy and complaint procedure to every employee and periodically redistribute
- Provide mandatory training to all employees to ensure understanding

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POLICY

- Specific to sexual harassment
- Define broadly for all harassing behavior
- Practical examples

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POLICY:
Electronic Communications/Social Media

- Policy applies to e-coms and social media




Dating Guidelines

- Prohibit-not practical in reality
- Risks (legal and employee relations)in dating- dissuade those in power
- Dissuade in training



COMPLAINT PROCEDURE

- Explicit complaint procedure
- Points of contact/gatekeepers
- Confidentiality
- Non-retaliation
- Corrective action
- Dissemination



WHAT IS RETALIATION?

- (1) Employee engaged in protected activity
- (2) After or contemporaneous with engaging in that conduct, the employer took some adverse action against the employee
- (3) The adverse action was materially adverse
- (4) A causal connection existed between the protected activity and the adverse action



ANTI-HARASSMENT POLICY AND COMPLAINT PROCEDURE RECAP:


- Prohibition against sexual harassment
- Protection against retaliation
- Effective complaint process
- Confidentiality provision
- Effective investigative process
- Assurance of immediate and appropriate corrective action



CORRECTIVE MEASURES

- Oral or Written Warning
- Transfer or Reassignment
- Demotion
- Reduction of Pay
- Suspension
- Discharge
- Training or Counseling
- Monitoring of Harasser






Harassment in the Workplace:


Why Doesn't Traditional Training Work?

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• HOW NOT TO TRAIN




The Office HR Training video what not to do - YouTube.wmv



Traditional Training

- Why do employers train about harassment?
 - Avoid Lawsuits
 - Lower Settlements
 - Jury Awards
 - Reduce employer liability
 - Reduce individual liability



EEOC Stats

- In 2016, 1/4 of 30,000 charges involved harassment
- EEOC study reported that 70% of workers who were harassed did not report it
- 75% who did report experienced retaliation



Organizational Culture

- What is Organizational Culture ?

What We See	Behaviors, systems, processes, policies
What We Say	Ideals, goals, values, aspirations
What We Believe	Underlying assumptions



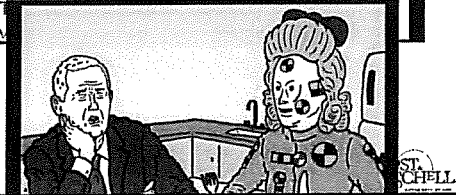
Culture Change

- It Starts at the Top –Leadership on Board
- Accountability
- Commitment to diversity and inclusion
- Careful conversations that don't cause women to become angry and men to become defensive

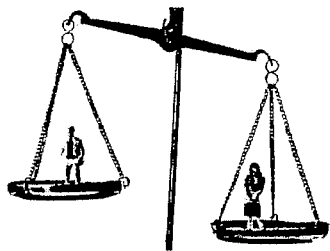


Avoid the Pence Rule/Social Exclusion

**Mike Pence's Dining
"Standard" Reveals So
Much About What He
Thinks of Women**



POWER



How Change the Power Hierarchy?

- Change behaviors and mindsets will follow
- Given women the opportunity to mentor both men and other women and lead
- Engage senior leadership in championing equity and prompting a no tolerance position
- Give language and tools to enable bystanders to speak up and become "unstanders"



Training of Individuals with Power

- Refrain from harassment in any form
- Report to HR all complaints of harassment of inappropriate conduct
- Respond proactively
- Consult with HR
- Remedy unlawful harassment
- Refrain from unlawful retaliation
- Accountability



Why Change-Costs How Change?

- Foster mutual respect
- Achieve gender equality
- Create a culture of inclusion



Training Post-Weinstein

- Increase employee productivity
- Increase employee morale
- Attract and retain valuable employees
- "Kinder and gentler workplace"
- Learn to respect each other's differences

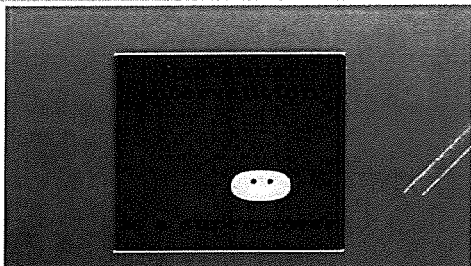


Board of Director Considerations

- Why Boards of Directors must focus on sexual harassment?
 - Role of Board relative to prevention
 - Role of the Board relative to rapid response plan
 - Role of the Board in increasing gender and other diversity in senior level jobs
 - Interactions between Board members and employees

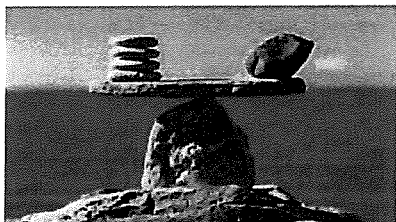
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Bystander Intervention



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Balancing Act



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OTHER METHODS TO FIGHT SILENCE

- Anonymous workplace climate surveys
- Exit Interviews
- Individual Liability reminder
- Civility Training
- Implicit Bias Training




DOING NOTHING IS RISKY

- Discounting SH complaints sends a message that the behavior is acceptable
- Preventing SH must occur in the context of mutual respect, gender equity and cultural inclusion



Benefits of Addressing Poor Conduct

- Fewer lawsuits
- Better morale and productivity
- Positive brand and reputation



**IF YOU TAKE ANYTHING
AWAY FROM TODAY...**

CULTURE CHANGE IS NECESSARY



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**WHAT ARE RISKY
BEHAVIORS?**

- Asking another employee out on a date or for dinner;
- Massaging shoulders, hand, back or any other body parts – brushing up against others
- Leering, cat calls, winks, blowing kisses

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**WHAT ARE RISKY
BEHAVIORS?**

- Commenting on way clothing fits or looks
- Commenting on physical attributes
- Using sexist, demeaning or inappropriate terms
- Discussing sexual activities
- Using nicknames

POST-
SCHILL

WHAT ARE RISKY BEHAVIORS?

- Standing physically closer than normal
- Gestures conveying sexual connotations
- Giving inappropriate or excessive gifts
- Unnecessary touching or brushing against another employee



WHAT ARE RISKY BEHAVIORS?

- Telling sexual or sexist jokes
- Displaying written or graphic material of a sexual or sexist nature
- Email or Voicemail



HYPOTHETICAL CASES

- A female employee requests a pay increase from her male manager. The manager tells her she isn't friendly enough toward him and invites her to his apartment for dinner to "loosen up." She declines. She is told that when she changes her mind, the manager will consider her request.



HYPOTHETICAL CASES

- Is there violation as to that instant on the part of employer?
- What if she does not give in and receives no raise?
- What if she submits and receives raise?



HYPOTHETICAL CASES

- Linda was the first female worker hired at steel mill. She gets along well with the crew with whom she works and they often engaged in joke telling (many are obscene). The atmosphere is "rough and tumble", and all of them, including Linda, swear colorfully. A few months later, Linda starts telling the men to cut it out – she doesn't like the language or the jokes.



HYPOTHETICAL CASES

- A female supervisor is attracted to a new employee in her work unit. She repeatedly telephones him, but only at home and after working hours, requesting that he have dinner with her. He declines her invitations. He becomes upset at the persistency of her requests and has difficulty concentrating at work.



HYPOTHETICAL CASES

- Hostile Environment – No “this for that”;
- If employer’s policy and procedure are in place and no complaint – maybe not
- Otherwise, yes as to both employer and supervisor



HYPOTHETICAL CASES

- The manager and a female supervisor were having an affair, which ends on amicable terms. Since the affair ended, the supervisor is now faced with a promotion decision among several candidates, one of whom is the female lead person. Convinced that his prior lover is well qualified for the promotion, and without any regard to their prior affair, she gets the job. Other candidates complain.



HYPOTHETICAL CASES

- A male supervisor makes continuous distasteful and abrasive comments and gestures toward female employees, including making obscene gestures behind their backs, commenting about their bodies, grabbing one woman, and remarking to another that his sales would be better if he had the same body “equipment” she did. The employer had established a procedure for reporting sexual harassment complaints, including phone numbers for employees to call. The women were aware of this procedure, but chose not to use it because they either feared that nothing would be done, or wanted to wait until after the lucrative Christmas selling season. When the women finally utilized the procedure, the employer took immediate action.



HYPOTHETICAL CASES

- A male supervisor makes daily remarks to a male employee regarding the employee's looks ("You look good today," "That's a great looking shirt," "Have you been working out?" etc.). The supervisor also asks the employee probing questions about the employee's personal life. The remarks and questions make the employee extremely uncomfortable.



HYPOTHETICAL CASES

- A female employee receives numerous letters at home from a co-employee. The letters scare the female employee ("I think about you all the time," "The fact that you have no time for me makes me wonder whether I should go on," etc.). The letters do not contain threats. When the female employee voices her concern, the employer offers her a transfer to a different work site.



IF YOU TAKE ANYTHING AWAY FROM TODAY...


- Get a filter: **Filter** before you speak
- **Clueless** is no excuse
- **No** means **no** the first time
- My private life is **private**
- If it's **not about business**, it's **none of your business**
- Harassment ends when you **SPEAK UP!**
- Harassment Ends When there is **Mutual Respect, Gender Equity and CHANGE IN CULTURE**



QUESTIONS?

????????????????????????????????

THANK YOU FOR YOUR
ATTENTION!



Sarah C. Yerger



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EDUCATION

- Widener University School of Law (J.D., *Cum Laude*, 1993)
- Juniata College (B.A. in Spanish/Pre-law, Dean's List, 1990)
- University of Barcelona - Attended 1988-1989 Study Abroad Program

BAR MEMBERSHIPS

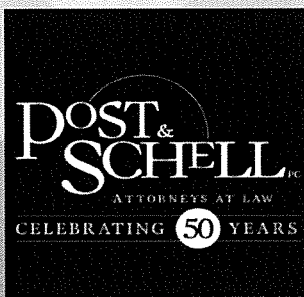
- Pennsylvania

AFFILIATIONS

- President - James S. Bowman, American Inn of Court
- Vice President - Federal Bar Association, Middle District of Pennsylvania Chapter
- Lawyers Advisory Committee, United States Middle District of Pennsylvania
- Pennsylvania Bar Association
- United States Middle District of Pennsylvania Lawyers Advisory Committee
- United States Middle District of Pennsylvania, Certified Mediator

Sarah C. Yerger is a Principal in the Firm's Employment & Employee Relations, Labor and Wage and Hour Practice Groups. She regularly litigates and is the lead trial lawyer in commercial disputes, constitutional law claims, professional licensure issues, regulatory matters, and employment defense litigation. She has tried cases before federal district and appellate courts, state trial and appellate courts, and federal and state administrative agencies. Ms. Yerger's experience as an attorney with the Commonwealth of Pennsylvania provides the Firm's clients with a wealth of first chair trial experience, particularly with the U.S. District Court for the Middle District of Pennsylvania, the Commonwealth Court of Pennsylvania, and Dauphin County Court of Common Pleas. She also is a member of the Middle District's court trained and appointed mediators, as well as the federal court's Lawyers Advisory Committee.

Ms. Yerger's practice includes the full gamut of commercial litigation representation, including: business torts, unfair competition, fraud and consumer fraud statutes, government program litigation, and breach of fiduciary duty, among others. She also represents a wide-range of professionals in Pennsylvania licensure issues, including medical professionals, attorneys, and pharmacists. Her employment & employee relations practice includes the defense of employers in employment discrimination, wage and hour, and labor-related litigation. She provides advice, counsel and representation to employers in all aspects of employment law under every major employment statute, including the ADA, ADEA, PDA, civil rights statutes, FMLA, FLSA and state wage and hour laws, and the Pennsylvania



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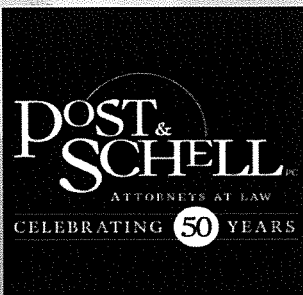
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- Board of Directors - St. Stephen's Episcopal School
- American Heart Association, Capital Region Division
- Coordinator - Dauphin County Children and Youth Gift Program
- Team Leader - Civics Alliance Program
- Widener University Mentoring Program
- Bowman Inn of Court Community Outreach Coordinator
- Inn of Court Third Circuit Advisory Committee

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Equal Pay Act, Human Relations Act and Uniform Trade Secrets Act. She serves as local counsel in commercial and employment cases in federal court in Harrisburg, Scranton, Wilkes-Barre, and Williamsport.

Ms. Yerger's practice also includes federal Freedom of Information Act (FOIA) and Pennsylvania's Right-to-Know Law matters, including handling incoming and outgoing requests and appeals. She has significant experience with the Right-to-Know Law, having served as the Pennsylvania Office of Attorney General's Right-to-Know Appeals Officer, reviewing all associated appeals and or requests for the Office. This experience allows her to counsel private clients on related matters and laws, and she has also handled numerous FOIA and Right-to-Know requests in private practice.

In 2014, Ms. Yerger was honored by PBA's Commission on Women in the Profession with the Lynette Norton Award, which annually recognizes a female attorney who excels in litigation skills and is devoted to assisting other women who follow in the legal profession. She was also selected as one of *The Legal Intelligencer's* "Women of the Year," a list that highlights and recognizes the achievements of top women attorneys across the Commonwealth of Pennsylvania. In 2016, Widener University Commonwealth Law School honored her with the inaugural "Excellence in Public Service Award," recognizing her commitment to public service and highlighting the impact of Widener Law Commonwealth alumni on the public sector. In



Sarah C. Yerger

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In 2017 she was selected as a recipient of a Women of Influence Award by the *Central Penn Business Journal*.

Prior to joining Post & Schell, Ms. Yerger served as Senior Deputy Attorney General, in the Pennsylvania Office of Attorney General. For almost 15 years, she represented and counseled Commonwealth agencies and employees in federal and state court litigation with an emphasis on federal constitutional issues, employment and discrimination cases, PHRC/EEOC, labor relations arbitrations, and defense of a broad spectrum of Commonwealth statutes.

Ms. Yerger also served as the Assistant Counsel for Employment Security (July 1998-April 2000) and Assistant Counsel for Unemployment Compensation Board of Review (May 1993-July 1998) for the Pennsylvania Department of Labor & Industry.

Her professional affiliations include serving; as President of the James S. Bowman, American Inn of Court, Vice President of the Federal Bar Association's Middle District of Pennsylvania Chapter, and on the Lawyers Advisory Committee for the United States Middle District of Pennsylvania. Ms. Yerger was also on the Pennsylvania Bar Association's (PBA) Government Lawyers Committee, Co-Chair of the PBA's Commission on Women in the Profession, and recognized by the PBA in 2005 as "Government Lawyer of the Year."

Actively involved in her community, Ms. Yerger serves on the Board of Directors for St. Stephen's Episcopal School in Harrisburg. She was also involved with the American Heart Association, Capital Region Division as a Board Member and Past President. The Association honored her as "Volunteer of the Year" in 2003 and with the "Spirit of Heart Award" in 2008. Ms. Yerger was recognized by the YWCA in 2012 with the "Woman of Excellence Award." For more than fifteen years, she has organized a "gifts for kids" program through Dauphin County Children and Youth Services which benefits needy children in the Harrisburg area. In 2015, 2016, and 2017 Ms. Yerger was listed in Pennsylvania Super Lawyers for Business Litigation. She is also recognized as one of *Harrisburg Magazine's* Local Legal Leaders of 2015.