

EEO LAW & SEXUAL HARASSMENT

What you need to know and do

PURPOSE OF TRAINING

- ▶ Learn about the EEOC & the Laws Enforced
- ▶ Sexual Harassment
- ▶ Recognize Discrimination vs Unfair treatment
- ▶ Prevent Discrimination and Create a Respectful Workplace

ABOUT THE EEOC

- ▶ Created by Congress with the passage of the Civil Rights Act of 1964.
- ▶ Is an independent, federal agency.
- ▶ Is a federal law enforcement agency.
- ▶ Resolves complaints of employment discrimination.
- ▶ Has 53 field offices nationwide
 - ▶ The New York District has office in New York City, Boston, Newark and Buffalo
 - ▶ Has jurisdiction over the States of CT, ME MA, NH, NY, RI, VT and the State of NJ 13 Northern Counties

*Our mission is to stop and remedy **unlawful** employment discrimination.*

FEDERAL ANTI-DISCRIMINATION IN EMPLOYMENT LAWS

- ▶ Title VII of the Civil Rights Act
 - ▶ Race, Color, Sex (including gender-stereotyping), National Origin, Religion, Pregnancy, Harassment, Retaliation
 - ▶ 15 or more employees
- ▶ Age Discrimination in Employment Act
 - ▶ Age 40+, Harassment, Retaliation
 - ▶ 20 or more employees
- ▶ Americans with Disabilities Act (ADA)
 - ▶ Disability, Accommodation, Harassment, Retaliation
 - ▶ 15 or more employees
- ▶ Equal Pay Act
 - ▶ Sex-based wage discrimination, Retaliation
 - ▶ 2 or more employees of the opposite sex
- ▶ Genetic Information Non-Discrimination Act
 - ▶ Genetic Information, Collection, Use, Harassment, Retaliation
 - ▶ 15 or more employees
- ▶ Retaliation apply to all the above.

WHAT IS EMPLOYMENT DISCRIMINATION?

- ▶ A person treated differently because of his/her race, sex, color, religion, national origin, age, or disability.

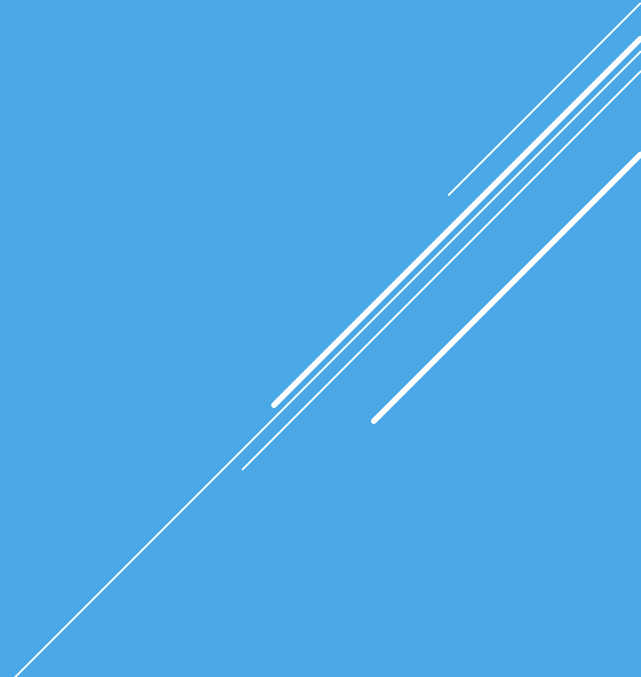
WHO IS PROTECTED?

Covered Employers	Protected Individuals
<ul style="list-style-type: none">-- Private Employers-- Government Agencies-- Labor Organizations-- Employment Agencies/ Staffing Companies-- Apprenticeship and training programs	<ul style="list-style-type: none">-- Employees-- Job applicants-- Temporary workers-- Seasonal workers-- Part-time workers-- Former employees-- Undocumented workers-- Volunteers

WHO IS AFFECTED?

- ▶ Private companies
- ▶ State or local government agencies
- ▶ Private and public schools and universities
- ▶ Non-profit corporations
- ▶ Employment agencies
- ▶ Labor organizations
- ▶ Joint-apprenticeship committees

IT IS ILLEGAL TO DISCRIMINATE IN ANY ASPECT OF EMPLOYMENT, INCLUDING:

- ▶ hiring and firing
 - ▶ compensation
 - ▶ discipline
 - ▶ assignment
 - ▶ promotion
 - ▶ layoff or recall
 - ▶ job advertisements
 - ▶ recruitment
 - ▶ testing
 - ▶ use of company facilities
 - ▶ training and apprenticeship programs
 - ▶ other terms and conditions of employment
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TITLE VII: RACE DISCRIMINATION

Unfavorable treatment of an employee based on race or because of personal characteristics associated with race

Title VII does not define “race” but it can include:

- Ancestry – Racial or ethnic ancestry
- Physical characteristics associated with race
- Race-related illnesses or genetics
- Cultural characteristics related to race or ethnicity
- Perceived race
- Association with someone of a particular race

WHAT IS COLOR?

- ▶ Skin pigmentation, complexion, shade or tone
 - ▶ Discrimination can occur between persons of different races or ethnicities, or between persons of the same race or ethnicity
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TITLE VII: NATIONAL ORIGIN DISCRIMINATION



Treating people unfavorably b/c of

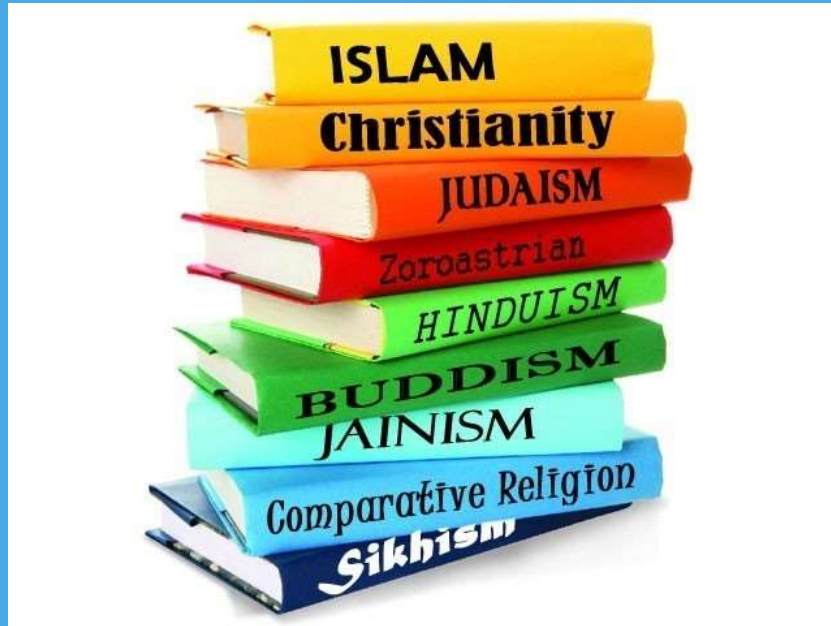
- Where they came from
- Ethnicity or accent
- Customs
- Association (marriage or other connection)
- Covers workers regardless of citizenship or work authorization

TITLE VII: RELIGIOUS DISCRIMINATION



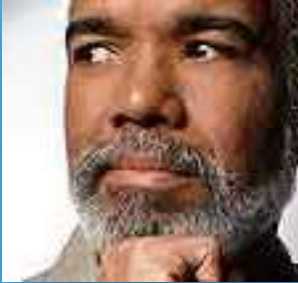
- Less favorable treatment due to **religious belief** or **non-belief**
- Denial of reasonable accommodation for religious practice
- Covers persons of all faiths as well as atheists
- Narrow exception for religious institutions

RELIGIOUS ACCOMMODATIONS



Title VII requires employer to accommodate sincerely-held religious belief or practice unless there is undue hardship.

AGE DISCRIMINATION IN EMPLOYMENT ACT (ADEA)




- Covers individuals age 40 and over
- No upper age limit (minor exceptions)
- Does not prohibit asking a job candidate their age, but you better have a good reason.
- Waivers/OWBPA



Prohibits discrimination due to disability or association with a disabled person

Requires employers to provide reasonable accommodation to qualified individuals with a disability

ADA: TYPES OF ACCOMMODATION

- ▶ Part-time or modified work schedules
 - ▶ Flexible leave schedules
 - ▶ Obtaining or modifying equipment or devices
 - ▶ Reassignment to a vacant position
 - ▶ Restructuring the job or eliminating non-essential job duties
 - ▶ Provide readers/interpreters
 - ▶ Making facilities more accessible
 - ▶ Modifying the job application procedures
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EQUAL PAY ACT (EPA)

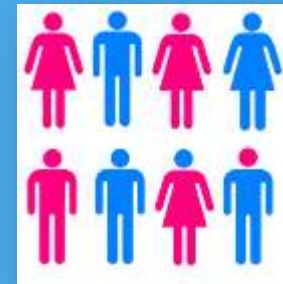


Prohibits gender-based wage discrimination.

- Receiving less pay than persons of the opposite gender for performing equal work.

TITLE VII: SEX DISCRIMINATION

- Employment discrimination based on GENDER
 - Job assignment, compensation, terms & conditions of employment, etc.
 - Discrimination based on pregnancy, childbirth, related medical conditions
 - Gender Identity/Sexual Orientation
 - Sexual harassment



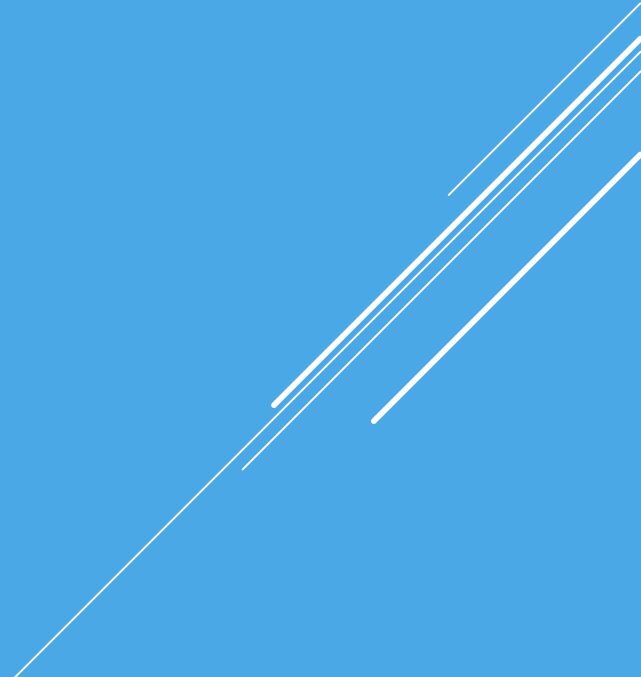
PREGNANCY DISCRIMINATION ACT



Employers must provide accommodations to women affected by pregnancy or related medical conditions the same as they would any other worker (male or female) with a temporary medical condition.

HARASSMENT

A LEGAL DEFINITION

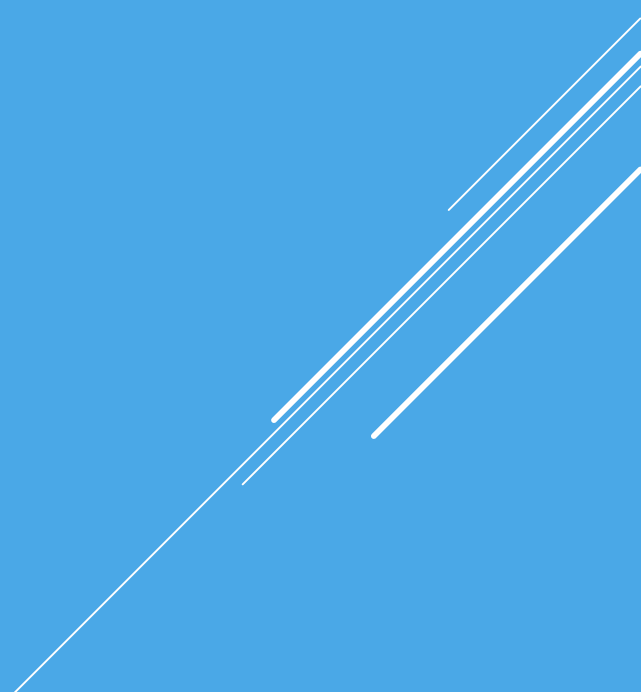
- ▶ Uninvited or unwelcome verbal or physical behavior
 - ▶ Of a sexual nature
 - ▶ Especially by a person of authority
 - ▶ Toward a subordinate
 - ▶ Such as an employee or student
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WHAT DOES THAT MEAN?

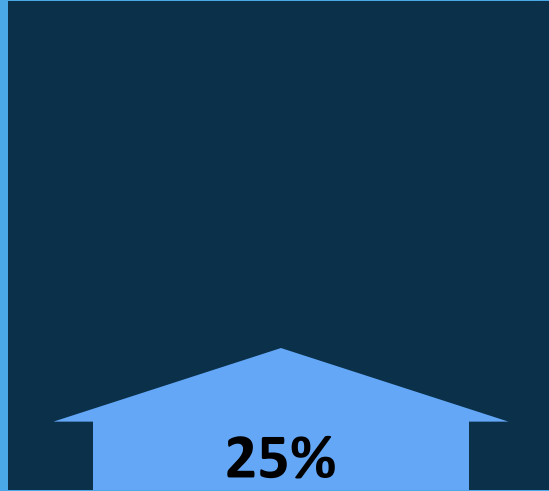
Verbal behavior

- ▶ Sexual Invitations
- ▶ Discussing sexual practices
- ▶ Jokes,
- ▶ remarks,
- ▶ images, messages with
- ▶ explicit sexual content
- ▶ Sexual “sounds,” gestures, postures

Physical behavior

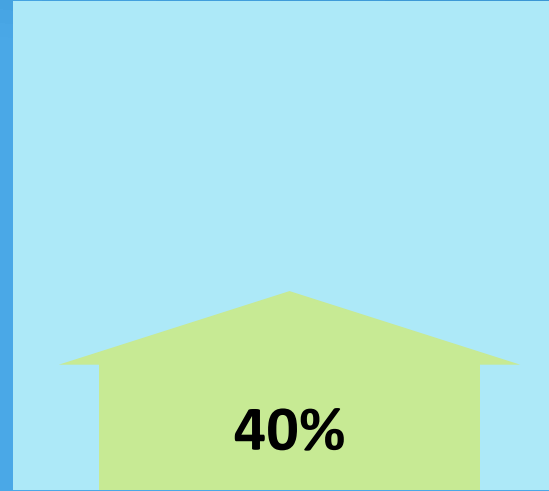
- ▶ Grabbing or touching inappropriately
 - ▶ Rubbing, groping
 - ▶ Kissing
 - ▶ Stroking
 - ▶ Hugging*
 - ▶ Texting sexual images
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Prevalence of Sex-Based Harassment: *Varying Definitions*



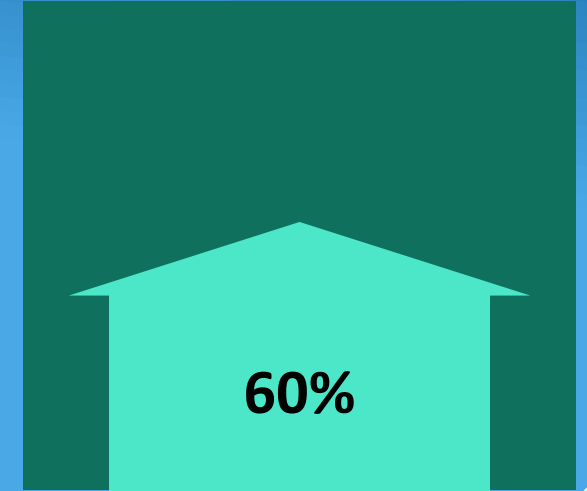
Most Conservative Estimate

25% of women experience
“sexual harassment,” if not
defined in the survey.



More Accurate Estimate

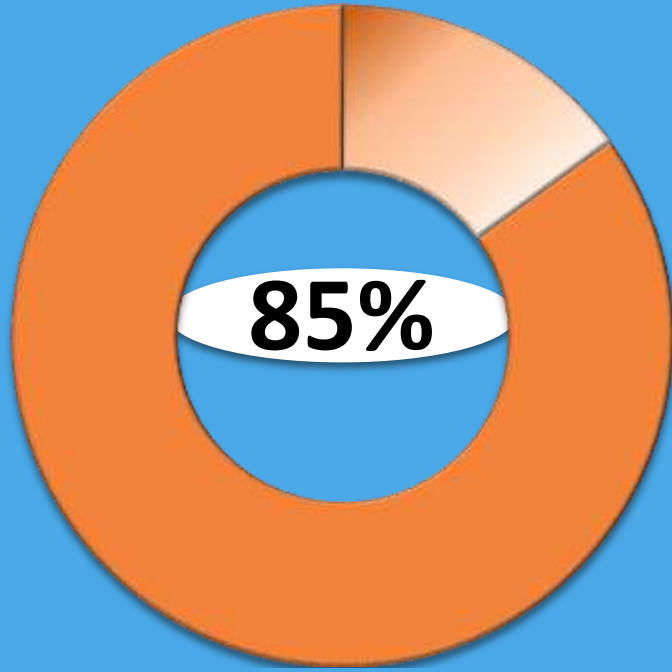
40% of women experience
unwanted sexual attention or
sexual coercion, even if they
don't label it as *“sexual harass-
ment.”*



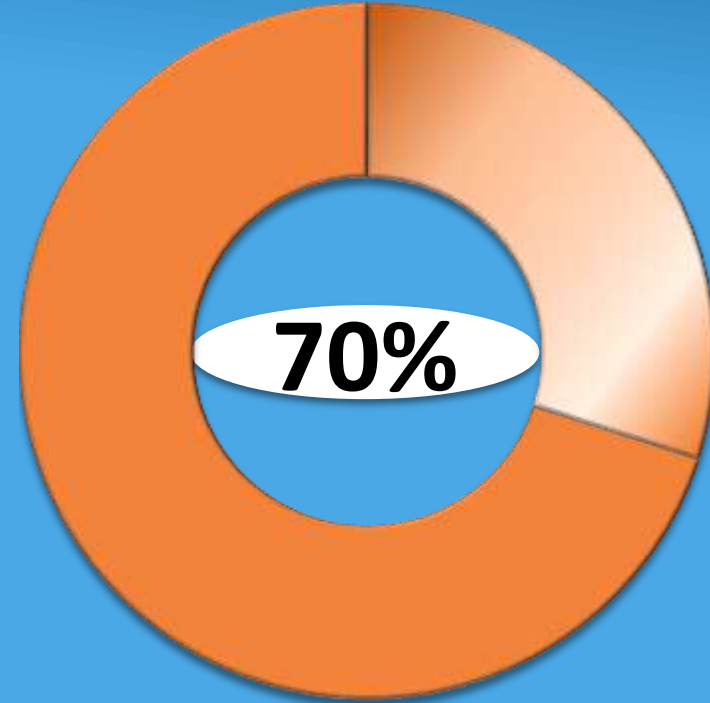
Most Accurate Estimate

60% of women experience
unwanted sexual attention
or *sexual coercion*, OR *sexu-
ally crude conduct* or *sexist
comments* in the workplace

Harassment is HUGELY UNDER-REPORTED



Upwards of 85% of people never file a formal legal charge.



Approximately 70% of employees never even complain internally.

WHY DON'T PEOPLE COMPLAIN?

▶ HUMILIATION

▶ DISBELIEF

▶ BLAME

▶ INACTION

▶ OSTRACISM

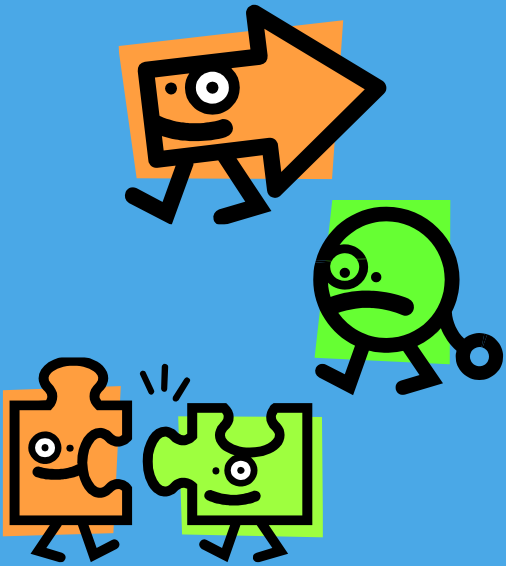
▶ REPUTATIONAL DAMAGE

▶ CAREER DAMAGE

▶ AND

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RETALIATION



- ❑ **ENGAGED IN PROTECTED ACTIVITY**
- ❑ **ADVERSE ACTION**
- ❑ **CAUSAL CONNECTION** between the protected activity and the adverse action

How does the employee handle sexual harassment?

Endure the behavior

Avoid the
harasser

Downplay the gravity
of the situation

Seek support from
family and friends

Leave the job, if one
can

Answers that make the situation worse

“JUST IGNORE HIM”

“WHAT WERE YOU WEARING?”

“WHY DID YOU ANSWER HIM?”

“OK, I’LL TALK TO HIM”

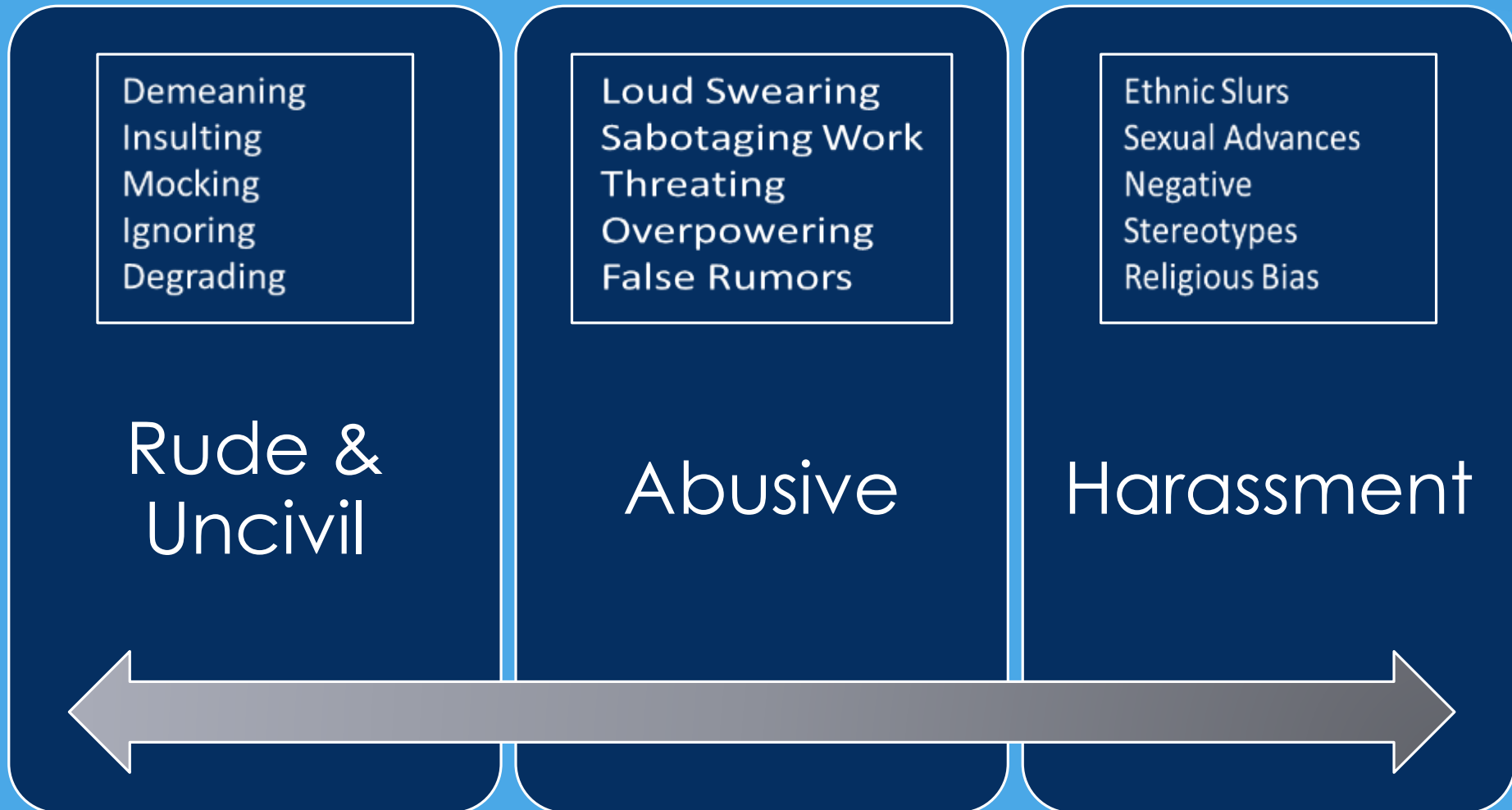
“IT’S HARMLESS - JUST A JOKE”

“I FIND THAT HARD TO BELIEVE”

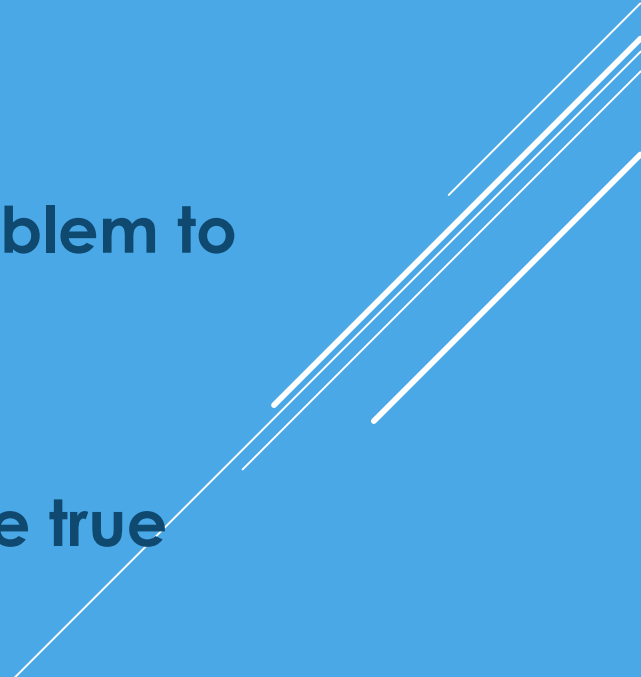
“HE DOESN’T MEAN ANYTHING BY IT”

“OK, I’LL SEE IF WE CAN GET YOU A TRANSFER”

BEHAVIOR SPECTRUM



CASE EXERCISE

- ▶ Work in groups and review the case exercise handout sheet
 - ▶ Identify the behavior and how serious you think it is
 - ▶ Examine how you might advise the person with the problem to handle it
 - ▶ Assume for the purpose of this exercise that all facts are true
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IS THIS SEXUAL HARASSMENT?

We would call it a hostile atmosphere based on sex:
creates an intimidating, hostile or offensive work environment

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SEVERE OR PERVASIVE

- ▶ Determined by nature and frequency
 - ▶ Seemingly innocuous or isolated instances of unwelcome conduct could lead to the creation of a hostile work environment!
 - ▶ Very fact-specific
- ▶ EEOC will consider totality of circumstances
 - ▶ Does it interfere with work performance?
 - ▶ Does it create an intimidating, hostile or offensive work environment?
- ▶ One sexual proposition or slur does not meet requisite level
 - ▶ Exceptions such as rape cases



FEDERAL

V.

NYC HARASSMENT LAW

	Title VII, Civil Rights Act	NYC Commission on Human Rights
Types of Workers covered	Employee Former Employee Temporary Worker Applicant Some Interns Undocumented Worker	<i>All types covered by EEOC, plus</i> ALL Workers, not just Employees
Employer Size	15 or more employees	Extend to all employees, regardless of the size of the employer.
Deadline to file	300 days	3 years after the alleged harassing conduct occurred
Training & Posting Requirements	None	Employers are required to display an anti-sexual harassment rights and responsibilities poster Employers with 15 or more employees (including interns) required to conduct annual anti-sexual harassment training for all employees, including supervisory and managerial employees



FEDERAL

V.

NYS HARASSMENT LAW

	Title VII, Civil Rights Act	NYS Division of Human Rights
Types of Workers covered	Employee Former Employee Temporary Worker Applicant Some Interns Undocumented Worker	<i>All types covered by EEOC, plus “non-employees” including contractors, subcontractors, vendors, consultants, and other persons providing services pursuant to a contract.</i>
Employer Size	15 or more employees	Extend to all employees, regardless of the size of the employer.
Deadline to file	300 days	3 years after the alleged harassing conduct occurred
Training & Posting Requirements	None	Mandatory distribution of written anti-harassment policies in the workplace and annual anti-harassment training for all employees

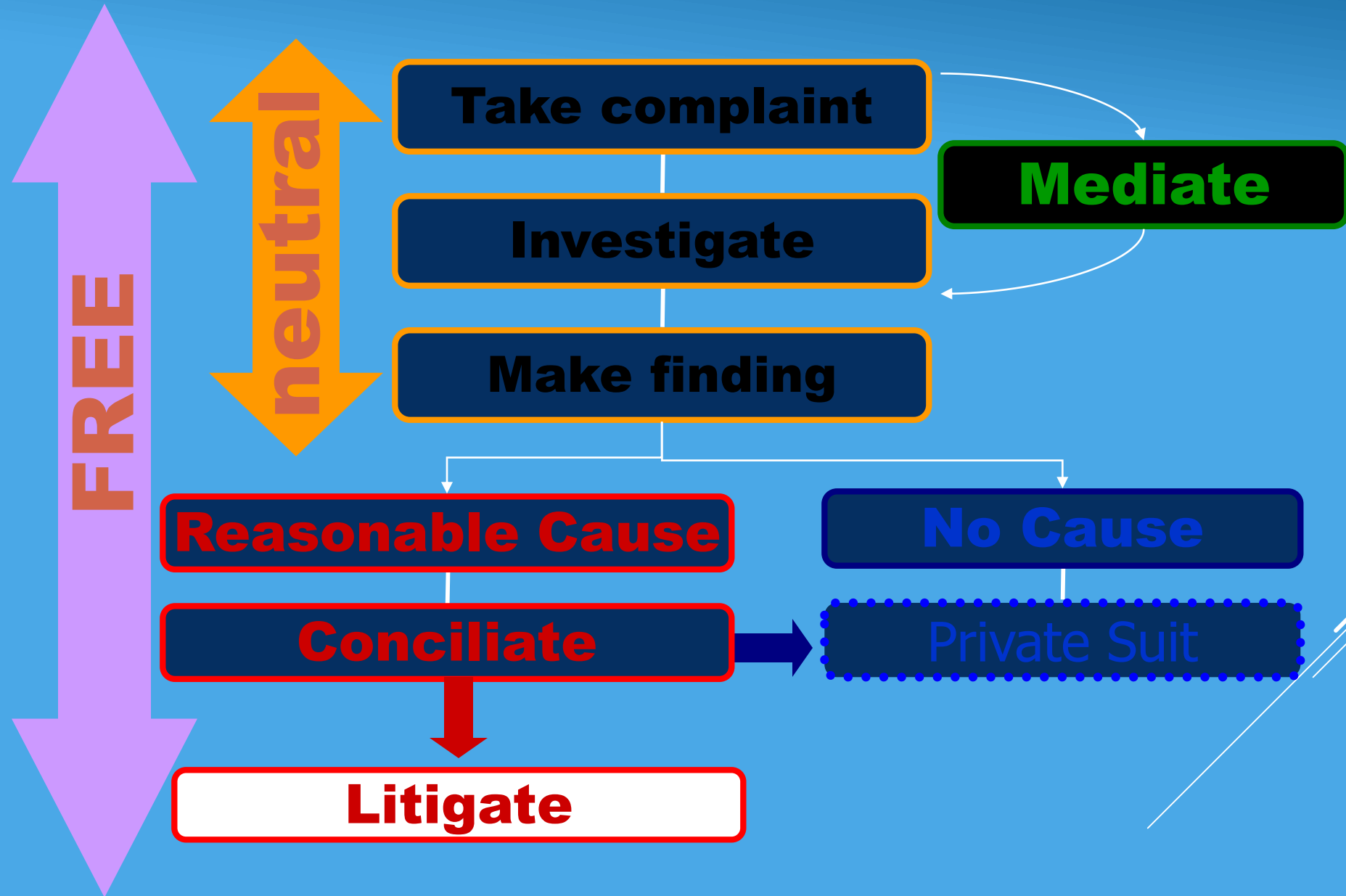
WHAT CAN YOU DO TO PREVENT HARASSMENT?

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REMEMBER

- ▶ **The goal is to stop the behavior**
- ▶ **It will not go away on its own. Without intervention, it will get worse**
- ▶ **It is contagious**
- ▶ **A report to management or Human Resources must be made if there is unlawful behavior.**

EEOC'S PROCESS



FOR FURTHER INFORMATION ABOUT EEOC POLICIES
AND OUTREACH PROGRAMS,
PLEASE CHECK OUR WEBSITE
WWW.EEOC.GOV

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION