

# SEXUAL HARASSMENT 101:

**Presented By:**

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SEXUAL HARASSMENT EXPLAINED

THE CLAIM PROCESS

HOW TO AVOID CLAIMS

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# What Is SEXUAL HARASSMENT?

- Arises from an employment relationship
- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that directly or indirectly affects an individual's employment by embarrassing, humiliating, intimidating or threatening the employee
- Sexual Harassment includes a wide range of conduct:
  - Verbal, Visual, Physical
  - Sexual / Sexist Speech
  - Requests for Dates and Sexual Favors
  - Presentation of Sexual Content Materials
  - Unwanted Physical Touch
  - Exchange of Sexual Favors for Job-Related Incentives



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# What Law Allows an Employee To Make a Claim for Sexual Harassment?

## ➤ FEDERAL AND STATE LAW ON SEXUAL HARASSMENT

### ➤ FEDERAL LAW

- Title VII, Civil Rights Act of 1964

### ➤ STATE LAW

- Every State Has Laws Similar to, or Mirroring Federal Law, on Sexual Harassment
- Some State Laws are More Protective than Federal Law, While Other States Are Less Protective

## ➤ Most Claims Made Are Based on **Both** Federal and State Law



# Where Does an Employee Bring a Claim for Sexual Harassment?

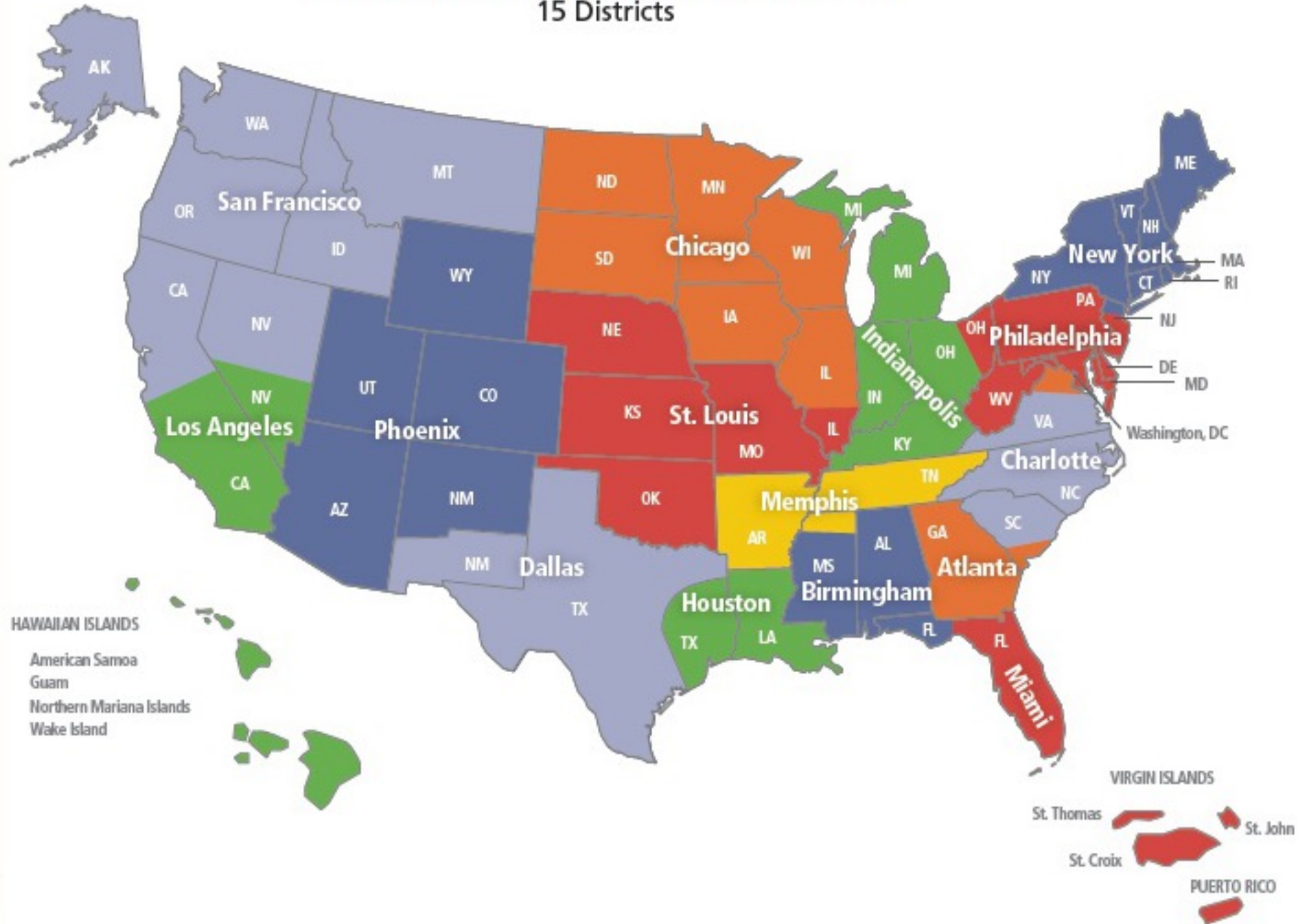
- ▶ Claims Based on FEDERAL Law Are Filed With a FEDERAL AGENCY -- the EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
- ▶ Claims Based on STATE Law Are Filed With a STATE Agency Unique to Each State, examples include:
  - ▶ Colorado “Civil Rights Commission”
  - ▶ New York State “Division of Human Rights”
  - ▶ California “Department of Fair Employment & Housing”
  - ▶ Florida “Commission on Human Relations”
  - ▶ Texas “Workforce Commission”
  - ▶ New Jersey “Division on Civil Rights”





# Equal Employment Opportunity Commission

15 Districts



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# What Are the Legal Claims That Employees Can Bring for Sexual Harassment Against Employers?



➤ QUID PRO QUO HARASSMENT

➤ HOSTILE WORK ENVIRONMENT



# The Employee Must FILE His / Her Claim Against the Employer Quickly...

- Within 180 days (6 months) of the unlawful conduct occurred, a “charge” MUST be filed with the EEOC FEDERAL agency
- IF, the State in which the unlawful conduct occurred also prohibits the same conduct, the 180 day deadline to file a “charge” is extended to 300 days (10 months)

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# QUID PRO QUO

➤ *QUID PRO QUO* is Latin:

“...something for something...”

➤ Literally a trade or a deal



# QUID PRO QUO

## Sexual Harassment Defined:

When a manager or other authority figure:

- ...offers or hints that he or she will give the employee something like a raise, promotion, opportunity and/or protection against something like a transfer, change of position or duties, reassignment of supervisor,
- ...in return for the employee satisfying a sexual favor or demand



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# HOSTILE WORK ENVIRONMENT

Sexual Harassment Defined:

Conduct by an employer,  
supervisor or co-employee that  
is unwelcome, severe or pervasive,  
and creates a hostile, intimidating  
or offensive work environment

Based on a “reasonable person”  
standard...



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# Who Can Be Sexually Harassed?

- Employees
- Sexual Harassment does not happen only to Women
- ANYONE...Men, Women and Androgynous individuals can all be the subject or target of Sexual Harassment
- Sexual Harassment does not always occur between individuals of the opposite sex or sexual orientation



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# Who Can Be the Harasser?

- Men, Women and Androgynous individuals can all be the perpetrator of Sexual Harassment
- Sexual Harassers on QUID PRO QUO claims are individuals with authority over the employee and are not just Men
- Sexual Harassers on HOSTILE ENVIRONMENT claims include authoritative individuals and co-employees



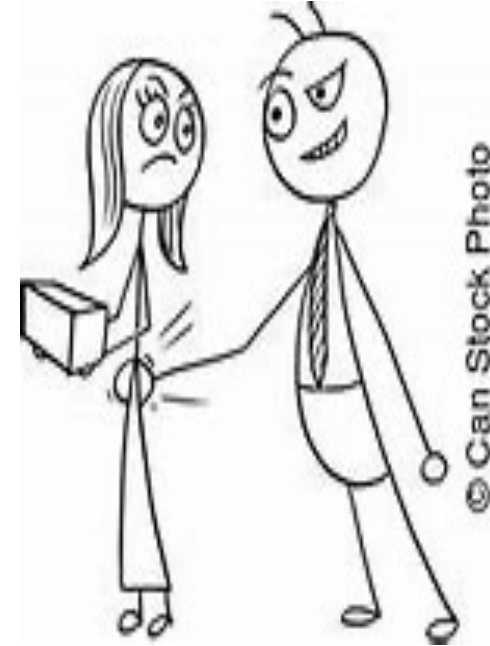
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# Physical Sexual Harassment

- ▶ “Huggy, Kissy Greetings”
- ▶ Invading Personal Space, Crowding
- ▶ Brushing Body Parts Against Body Parts



- ▶ Kissing
- ▶ Pinching
- ▶ Rubbing / Massaging



# Verbal Sexual Harassment

- ▶ Whistling, Growls

- ▶ Questions About Another's Sex Life

- ▶ Positive/Negative Body Comments

- ▶ Lewd or Sexually Suggestive Jokes or Banter



- ▶ Sexually Suggestive / Sexual Identification Terms

- ▶ Slang Terms: “Bitch,” “Dick,” “Gay,” “Trans / Tranny”

- ▶ “He’s SUCH a GIRL” or “Is she a woman or a man?”

# Visual Sexual Harassment

- Displaying / Sending by Computer, Email, Text:
  - Nude or Scantily Clad, Sexually Explicit
    - Models on Calendars
    - Pin-Ups / Centerfolds
    - Photographs
    - Drawings
    - Cartoons
  - Sex Aids / Toys
    - ... the “hopping penis...”
  - Sexually Explicit Magazines
  - Computer Porn



# What Are the Ramifications for a Harasser?

## What Can the Harassed Employee Get?

- Being investigated / found to be a Sexual Harasser is a serious issue
- A Harasser can be fired and held *personally liable*, at times criminal charges are brought
- An Employer who allows Sexual Harassment can be held liable



# Do Not Allow a Patient or a Vendor to be Sexually Inappropriate With Your Staff

- To protect You and the Practice
  - Specifically and thoroughly DOCUMENT the episode
    - Obtain staff /witness statements
  - Patient must be immediately discharged with no “second chances,” in writing



# Do Not Allow a Patient or Vendor to be Sexually Inappropriate With Your Staff (continued...)

- If the behavior involves unwanted physical contact, call the police to the office and report
  - Criminal charges can result for Assault/Battery against the Patient
  - Civil claim can be filed by the Staff Member against the Patient





# What Are the Ramifications for a Harasser?

## What Can the Harassed Employee Get?

➤ The Harassed Employee can recover:

- Lost Wages
- “Front Pay” or Reinstatement
- Emotional Distress Damages
- Punitive Damages
- Attorneys’ Fees



# Sexual Harassment of Employees Where You Hold Privileges Can Result in Lost Privileges...at a Minimum

Bad Conduct is Bad Conduct  
Wherever You Are...



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# What Can You Do To Avoid Sexual Harassment Liability?

- DO NOT engage in conduct which could be offensive
- DO NOT accept conduct which could be offensive
- Refuse and reject inappropriate conduct from others in all professional settings
- Sexually explicit jokes, or jokes with sexually explicit terms, are OFF LIMITS



# Every Practice, Every Employer Should Have a SEXUAL HARASSMENT POLICY

- ▶ Any Employee who believes he/she has been Sexually Harassed by a Supervisor or Co-Worker, *or by anyone else associated with or visiting our practice...* or is a Witness to such Harassment...SHALL IMMEDIATELY REPORT to \_\_\_\_\_ or \_\_\_\_\_
- ▶ An Employee is *never expected* to report Sexual Harassment to the same person about whom he/she is complaining
- ▶ No discipline or retaliation for reporting will occur

# Every Practice, Every Employer Should Have a SEXUAL HARASSMENT POLICY (continued...)

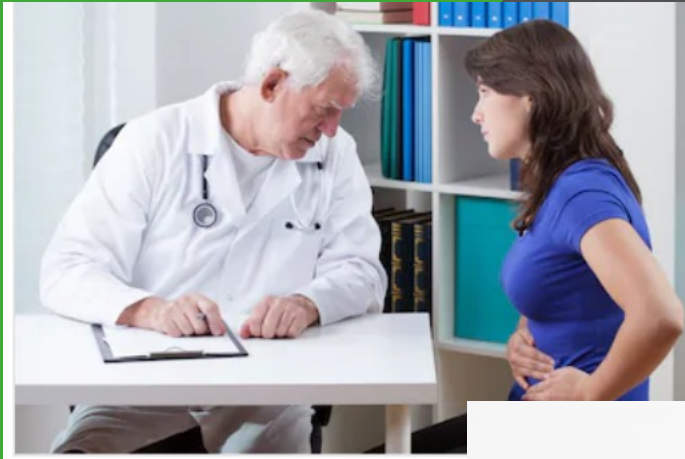
- Any report of Sexual Harassment will be *promptly investigated* and if warranted, the Employer *will take* appropriate, corrective action
- Investigation of Sexual Harassment does not require a written report
- To the *extent possible*, Sexual Harassment investigations will be confidential
- At the completion of the investigation, the *results will be communicated to the complaining Employee and the alleged Harasser*

## Every Practice, Every Employer Should Have a SEXUAL HARASSMENT POLICY (continued...)

- ▶ Any Employee found to have engaged in Sexual Harassment will face *immediate discipline up to and including termination from employment*
- ▶ Any Sexual Harassment complaint or allegations, found to be *frivolous, malicious or based on false information* will be considered a serious violation of our practice policies and could also result in disciplinary action, up to and including termination



# Don't Be These People...



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# Questions?



# SEXUAL HARASSMENT 101:

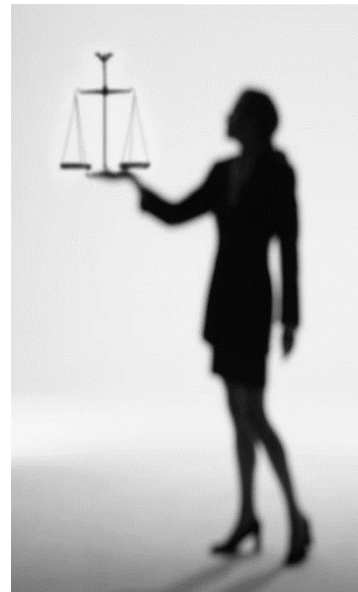
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