



## Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

# Facilitator Guide: Manager

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# Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

## Section 3

### Facilitator Guide: Manager

This section is a presentation guide to assist you with facilitating the *Creating the Respect Effect* training program designed for managers.

There are three parts to the program. Each part is shown at the top of the page with its time allotment. Topics within each unit are also in bold type with their time allotments. This will help you plan your time so you can maintain the program length of approximately 120 minutes.

#### Pre-Program Preparation

This section of the *Facilitator Guide: Manager* provides an overview of the training materials and what you need to do to prepare for facilitating the *Creating the Respect Effect* training program. The materials for the two programs, one designed for employees and one for managers, are included in this guide.

#### Training Materials

This *Facilitator Guide* contains all of the audiovisual and written materials that you will need to facilitate both training programs. The table below lists the materials and their location.

#### Program Materials

#### Location in Guide

<i>Respect Effect</i> DVD .....	
<i>Respect Effect Support Materials</i> CD-ROM .....	
(See additional information below.)	
<i>Facilitator Guide: Employee</i> .....	Section 1
<i>Employee Workbook</i> .....	Section 2
<i>Facilitator Guide: Manager</i> .....	Section 3
<i>Manager Workbook</i> .....	Section 4
<i>Support Materials</i> .....	Section 5

The DVD contains all of the video segments used in the programs.

#### Directions for Using DVD

1. Insert the DVD into the DVD player.
2. Highlight and select Video Segments.
3. A menu will appear.
4. Highlight and select *At the Sales Meeting* to start the first video.
5. At the end of each video segment, you will be returned to the main menu.

The CD-ROM contains all of the PowerPoint® slides used in the programs. PDF files are included for printing, if desired. The CD-ROM also contains PDF files of the *Employee Workbook*, *Manager Workbook*, and employee and manager *Facilitator Guides*.

#### Directions for a PowerPoint® Slide Presentation

1. Insert the CD-ROM into the CD-ROM drive.
2. Double-click the My Computer icon.
3. Double-click the CD-ROM drive icon.
4. Double-click the Manager Training.pps icon.

#### To-Do List (Do at Least 1-2 Weeks before Training Program)

- Reserve TV/DVD player and laptop/LCD projector.
- Set up PowerPoint® presentation.
- Review all program materials thoroughly and note where Company policy can be referenced.



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- Make notes of examples specific to your Company and anticipate questions that participants are likely to ask.
- Look up the discrimination law about protected categories in the jurisdictions where your employees work or with which your employees interface. You will need to add comments about those protected categories to address particular issues in your Company's work environment if necessary.
- Consider whether your Company's policy on avoiding harassment, discrimination and retaliation should be updated. (The program works nicely with the rollout of a policy update.)
- Practice presenting the program.

### *Facilitator:*

- *Please note that the optimal group size for this session is 20-30 employees to facilitate communication among employees.*
- *Scheduling sessions in close proximity to one another is important and should occur 1-2 weeks before the sessions.*
- *Check to ensure the sessions have the right number of people assigned to each.*

An up-to-date listing of the protected categories and the law on whether there is individual liability in each jurisdiction is available from Engelmeier & Umanah, P.A. for a fee. Fee-based consultations are also available if you need a resource for legal consultation about the program or related issues.

### **To-Do List (Do at Least 24 Hours before Training Program)**

- Gather all materials.
- Make copies of your Company's policies on the issues relevant to harassment, discrimination, retaliation and respect (e.g., offensive behavior policy).



## Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

### CONTENTS

<b>Welcome and Introduction</b> .....	5 minutes
<b>Review the Learning Objectives</b> .....	2 minutes
<b>Part 1: Defining Discrimination, Harassment and Retaliation</b> .....	20 minutes
Total Minutes .....	27 minutes
<b>Part 2: Identifying Sexual Harassment, Gender Discrimination and Retaliation Issues</b>	
• Video and Discussion: <i>At the Sales Meeting</i> .....	15 minutes
• Discussion: <i>Why Don't People Speak Up?</i> .....	5 minutes
• Video and Discussion: <i>Keeping the Customer Happy</i> .....	12 minutes
Total Minutes .....	32 minutes
<b>Part 3: Identifying Other Harassment, Discrimination and Retaliation Issues</b>	
• Video and Discussion: <i>Welcome Aboard</i> .....	13 minutes
• Video and Discussion: <i>Conversations at Lunch</i> .....	16 minutes
• Video and Discussion: <i>His New Bride</i> .....	13 minutes
Total Minutes .....	42 minutes
<b>Questions</b> .....	3 minutes
<b>Post-Test</b> .....	15 minutes
<b>Summary and Ending</b> .....	1 minute
 Program Total Minutes .....	 <b>120 minutes</b>

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## Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

### POWERPOINT® SLIDE #1 Title Screen

#### Welcome and Introduction (5 minutes)

- Welcome the managers to the training program.
- If a Company executive is going to kick off the program, have the Company executive briefly introduce you and bolster your credibility on the subject matter at hand—avoiding discrimination, harassment and retaliation in the workplace and taking steps to increase respect in the workplace.
- Introduce yourself and your background.

#### Remind folks of the rules of the manager program:

- There are no right or wrong answers or silly questions.
- Maintain respect for other managers' opinions and issues.
- Refer managers to the *Manager Workbook* to use for taking notes during the program.
- All information raised here must be kept confidential. This is a good opportunity to learn from and support each other during our time together.

*(Note to facilitator: It's important for managers to be able to openly discuss concerns about issues that are currently occurring in the workplace. Each manager participating must commit to supporting each other as issues are discussed, and maintaining confidentiality.)*

As a facilitator, it's important to remember that the topics presented here touch participants personally and emotionally, not just cognitively. Some managers may have dealt with workplace incidents involving a form of disrespect, harassment, retaliation or discrimination at some time in their life. This history colors their perspective, both intellectually and emotionally. It is, therefore, essential for you as the facilitator to be sensitive to the participants' emotions and opinions. Listen for and respond to managers' emotions and opinions, as well as the substance of the managers' reactions. Do not debate points of view that are incongruent with the program. Instead, model respectful communications. For example, you might respond to a comment such as "This is all liberal propaganda" with:

- Will you share with us why you feel that way?
- Do you have some life or management experiences that would assist us in discussing the issue of respect as you see it?

Then conclude with:

- That's an interesting point of view. Are there others in the room who would like to share their view?
- Other participants in the program have said \_\_\_\_\_ (a position congruent with the program).
- Does anyone have any comments or experiences they would like to share in connection with the points raised?

### POWERPOINT® SLIDE #2

#### Overview

Provide an overview of the program agenda.

#### There Are Three Parts of Information in the Program

- Part 1: Defining Discrimination, Harassment and Retaliation
- Part 2: Identifying Sexual Harassment, Gender Discrimination and Retaliation Issues
- Part 3: Identifying Other Harassment, Discrimination and Retaliation Issues



## Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

### Explain What to Expect during the Program

- View video clips and engage in thoughtful discussion.
- Learn information about what is expected of managers to assist in preventing harassment, discrimination and retaliation.
- This is a workshop, which means it's important for participants to share their views. The more participation, the more we can learn from each other, and the more successful we are as a Company.

### Review Housekeeping Details

- Length of program—about 120 minutes.
- Other details as needed (e.g., bathroom location, emergency exit, turning off cell phones and pagers).
- Make sure everyone has a pen and a name tag to facilitate optimal discussion.

### POWERPOINT® SLIDE #3

#### Introduce the Program

A respectful workplace is important to everyone.

- Today's program is called *Creating the Respect Effect*.
- It is a program about our commitment not only to comply with the law and our Company's policies, but also to a work environment that is respectful of each other.
- When employees are engaged in appropriate behaviors in the workplace, a climate of respect becomes part of the corporate culture. Respect becomes the norm. And a respectful corporate culture is essential to keeping our Company competitive and successful, which benefits all of us.
- A core element to having a respectful work environment is making sure that our work environment is free from illegal harassment, discrimination and retaliation.

### POWERPOINT® SLIDE #4

- As a manager, it is your responsibility to model appropriate respectful behavior and intervene when inappropriate behavior occurs, as per our Company policies and procedures as well as the law.
- We want to make sure our work environment is a place where differences are welcomed and respected. This means having a culture of respect at our Company.
- A culture of respect increases productivity and makes us more competitive and successful as an organization, which benefits all.

#### Managers Are Held to a Higher Standard

##### Managers have additional responsibilities of:

- Modeling appropriate behavior.
- Intervening when inappropriate behavior occurs per policy and procedures as well as your legal obligations.

##### Managers also must remember:

- In some states, managers can be held individually liable for allowing discriminatory, harassing and/or retaliatory conduct to occur.
- Even where there is no personal liability, our Company holds every manager accountable for addressing any discriminatory, harassing or retaliatory conduct you know about.



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### POWERPOINT® SLIDE #5

#### Review the Learning Objectives (2 minutes)

*(Refer Managers to Workbook, page 3)*

**Upon completion of this program, you will be able to:**

1. Define the two types of harassment: ***quid pro quo*** and ***hostile work environment***.
2. Explain why harassment and discrimination based on a person's **age, race, color, sex, disability, national origin, religion** and other protected categories are prohibited at our Company.

### POWERPOINT® SLIDE #6

3. Describe the difference between **the intent versus the impact** of behavior by employees, vendors and others.
4. Explain the **higher standard for managers** in terms of your own personal conduct and your special responsibilities for identifying and minimizing workplace discrimination, harassment and retaliation.
5. Become our Company's **first line of defense** against harassment, discrimination, retaliation and other disrespectful behavior by complying with Company policies and engaging in respectful behavior.

*(Note to facilitator: If you pass out your Company's policies and discuss the policies throughout the program, another stated learning objective could be to re-familiarize yourself with the Company's policies related to respect and the prevention of harassment, discrimination, retaliation and other disrespectful conduct in the work environment.)*

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## Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

### POWERPOINT® SLIDE #7

#### PART 1:

#### Defining Discrimination, Harassment and Retaliation (20 minutes)

### POWERPOINT® SLIDE #8

#### Introduce Topic

• The 1964 Civil Rights Act prohibits discrimination. Discrimination is a rather straightforward concept; that is, treating others differently because of their status as a protected category. It includes treating employees differently with respect to the terms and conditions of their employment. Harassment, on the other hand, is a little more difficult to describe.

*(Note to facilitator: Discussing the law works best as a question-and-answer session. Quiz participants based on what they already know, since most have attended some sort of avoiding harassment and discrimination program previously. Once they give the answers consistent with the information below, use the PowerPoint® presentation as reinforcement.)*

• Now we will describe how Title VII of the Civil Rights Act has been interpreted with regard to harassment in the workplace.

### POWERPOINT® SLIDE #9

#### The Legal Definition of Sexual Harassment

Sexual harassment is a form of unlawful sex discrimination under Title VII. The Equal Employment Opportunity Commission (EEOC) is the federal agency that enforces Title VII. It defines sexual harassment as:

- Unwelcome sexual advances;
- Requests for sexual favors;
- Sexually motivated physical conduct; or

### POWERPOINT® SLIDE #10

- Other verbal or physical conduct of a sexual nature, when:
  - Submission to that conduct is made a term or condition of an individual's employment;
  - Submission to that conduct is used as a factor in making employment decisions affecting an individual;or
- The conduct has the purpose or effect of unreasonably interfering with an individual's employment, or creating an intimidating, hostile or offensive employment environment.

### POWERPOINT® SLIDE #11

**In 1986, the United States Supreme Court recognized two different types of harassment:**

- *Quid pro quo* harassment.
- Hostile work environment harassment.

### POWERPOINT® SLIDE #12

#### *Quid Pro Quo* Sexual Harassment

- *Quid pro quo* is a Latin term that means "this for that," and implies an exchange of one thing for another.
- *Quid pro quo* harassment generally occurs when an employee is encouraged or pressured to trade sexual favors in return for an employment-related benefit, such as continued employment or a promotion.





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- The person who is pressuring the employee must have the authority to control the employee's working conditions; this person is usually a supervisor. In a typical *quid pro quo* case, a supervisor abuses his or her supervisory authority by pressuring a subordinate for sexual favors.

*(Note to facilitator: Managers are the ones who are often accused of quid pro quo harassment. This is a concept managers need to be very familiar with so they can take action to ensure that they or other managers avoid the risk of being involved in a quid pro quo harassment situation.)*

### POWERPOINT® SLIDE #13

#### Examples of *quid pro quo* sexual harassment:

- Demanding sexual favors in exchange for a promotion, raise or other job benefits.
- Threatening to deny an expected raise, promotion or other job benefit if sexual favors are not provided.

### POWERPOINT® SLIDE #14

#### Hostile Work Environment Harassment

- A pattern of ongoing harassing conduct that is so offensive or unpleasant that it unreasonably affects the employee's working conditions and creates a hostile work environment.
- This covers more than sexual conduct. It may be based on an employee's age, race, color, sex, disability, national origin, religion or other protected characteristic.
- The conduct must be based on or affect a protected category under the law or it does not constitute a hostile work environment under the law.

### POWERPOINT® SLIDE #15

- Conduct may be verbal, physical or visual, and the harasser may be a supervisor or a co-worker.
- Harasser can be someone who interacts with employees but does not work for our Company, such as customers or vendors.

*(Note to facilitator: This would be an important time to emphasize that simply because certain conduct does not violate the law does not mean it is okay at our Company. It may violate our Company's policy or it may be disrespectful, whether or not it violates a specific Company policy.)*

### POWERPOINT® SLIDE #16

#### Examples of sexually hostile work environment harassment (either alone or in combination with other factors) may include:

- Pornographic pictures or magazines in the workplace and vulgar comments about them.
- Offensive sexual comments made to and about the person based on his or her sex.
- Unwanted touching on someone's shoulder, arm, back, knee, etc.

*(Note to facilitator: Tell the managers that in the employee program, we have defined illegal hostile environment harassment so employees understand that it's quite difficult to be successful in a harassment claim, and not every bad act that happens at work creates an illegal hostile work environment. On the other hand, we've also let employees know that disrespectful behavior is not acceptable at our Company, even if it is not illegal. **As managers, you need to model respect and enforce the Company's rules/expectations prohibiting disrespect** so employees understand the Company expects more than just legal compliance.)*



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### POWERPOINT® SLIDE #17

#### What Determines if Conduct Is Harassing?

(Refer Managers to Workbook, page 5)

#### Other factors contribute in determining whether a hostile work environment exists:

- How **frequently** the offensive or discriminatory conduct occurs.
- Whether the conduct is **unwelcome**.
- The **severity** of the conduct.
- Whether the conduct is **physically threatening or humiliating**.
- Whether the conduct **unreasonably interferes with an employee's work performance**.
- The **impact** of the conduct on **the employee's psychological well-being**.

The courts apply a "reasonable person" standard to judge these factors.

#### Ask:

What Elements of Harassment does an employee have to prove to succeed in a claim of hostile work environment harassment?

(Note to facilitator: Refer to the appropriate PowerPoint® slide, after the managers have tried to provide the answers to the question.)

### POWERPOINT® SLIDE #18

#### Look for:

#### Elements of Harassment

An employee has to establish that:

- There was **conduct** that was
- **Related to a protected category**; and it was
- **Unwelcome**; and
- **Offensive to a reasonable person**; and
- So **severe or pervasive** that it
- **Affected a term or condition of his or her employment**.

#### Ask:

If an employee proves the six items above, is our Company liable for the hostile environment?

#### Look for:

It depends. Our Company is automatically liable for some harassment by supervisors, and is liable for harassment by others if it knew or should have known about the harassment and failed to take prompt action to address it.

(Note to facilitator: Elaborate below, using applicable PowerPoint® slides.)

### POWERPOINT® SLIDE #19

#### Who Is Liable for Harassment?

In 1998, the United States Supreme Court ruled that employers are liable for unlawful sexual harassment by supervisors with one limited exception. This heightened standard of liability is based on three principles:

1. An employer is responsible for the acts of its supervisors;
2. Employees should be encouraged to avoid harassment; and



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3. Employers are required to take reasonable steps to prevent harassment and avoid or limit the impact of harassment.

### POWERPOINT® SLIDE #20

The Supreme Court held that an employer is always liable for harassment committed by a supervisor that results in a “tangible employment action.” A tangible employment action is a “significant change in employment status” that usually inflicts direct economic harm on the person who was harassed.

### POWERPOINT® SLIDE #21

#### Examples of tangible employment actions include:

- Hiring and firing
- Promotion and failure to promote
- Demotion
- Reassignment that results in a significant change in an employee’s status
- An employment decision causing a significant change in an employee’s benefits and/or compensation

### POWERPOINT® SLIDE #22

**If harassment by a supervisor does not result in a tangible employment action, then the employer is liable for the harassment unless the employer can show that:**

1. The employer took reasonable care to **prevent** and promptly **correct** any harassing behavior; and
2. The **employee unreasonably failed** to take advantage of the preventive or corrective opportunities the employer provided, or otherwise to avoid harm.

### POWERPOINT® SLIDE #23

**One way an employer may be able to establish it took reasonable care to prevent and promptly correct any harassing behavior is to show it has:**

1. A comprehensive policy against harassment, discrimination and retaliation that was communicated to employees; and
2. An effective complaint procedure for employees to report suspected misconduct. If the employer also can show the employee unreasonably failed to use the complaint process, then it may be able to defend itself against liability for the harassment. Of course, training goes a long way toward showing good prevention and corrective action.

### POWERPOINT® SLIDE #24

#### Employer Liability for Harassment by a Co-Worker

An employer may be held liable to an employee for harassment committed by a co-worker if the employer knew or should have known about the conduct and failed to prevent or promptly fix the situation. Courts generally presume information a Company supervisor knew or should have known is information the Company knew or should have known.



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### POWERPOINT® SLIDE #25

#### Employer Liability for Harassment by a Non-Employee

Employers also may be held liable for harassment of employees by individuals outside our Company with whom the employees interact, such as customers, suppliers, outside contractors or other persons who are present in the employees' work environment. The standard for employer liability for the conduct of third parties is the same as when a co-worker commits the harassment. The employer is liable if it knew or should have known about the harassment but failed to promptly correct it.

### POWERPOINT® SLIDE #26

#### Retaliation (Reprisal)

Federal law and most state laws also protect from retaliation employees who oppose or report discrimination or harassment. Specifically, it is unlawful for an employer to retaliate against a person for opposing an unlawful practice, filing a charge or participating in an investigation into unlawful conduct. To establish a claim of retaliation, the individual must show that:

1. He or she opposed discrimination, or participated in a covered proceeding (e.g., helped someone file a charge, provided information to the EEOC or testified as a witness);
2. He or she suffered an adverse employment action; and
3. A causal relationship exists between the protected activity and the adverse employment action.

An example of "opposing discrimination" is filing a formal charge with the EEOC. However, informal behavior, such as voicing opposition to a supervisor about potentially discriminatory acts, may also qualify as protected opposition.

In addition to engaging in a protected activity, an individual making a claim of retaliation must show that the employer took an "adverse action" against him or her. Adverse actions generally include significant employment actions such as termination, discipline, demotion or reduction in wages and benefits. In contrast, less important matters that the employee may not like, such as not getting a new computer or being assigned to a different truck, usually do not constitute adverse actions under Title VII.

### POWERPOINT® SLIDE #27

#### Under the Law

- Filing a charge is protected.
- Providing information or being a witness is protected.
- Voicing opposition to illegal conduct may be protected.

If any employee is mistreated as a result of engaging in these protected activities, our Company could be liable for illegal retaliation.

### POWERPOINT® SLIDE #28

#### Managers May Have Individual Liability

Generally speaking, individual managers are not personally liable for employment discrimination or harassment under Title VII, the Americans with Disabilities Act (ADA) or the Age Discrimination in Employment Act (ADEA).

However, some state and local equal employment opportunity (EEO) laws prohibit both employers and individual managers from discriminating, harassing or retaliating, or failing to prevent discrimination, harassment or retaliation. In addition, individual employees may be liable under state common law



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theories for their harassing behavior. Thus, an individual employee who sexually harasses someone may be personally liable for state common law violations, such as intentional or negligent infliction of emotional distress or assault and battery. And, managers who fail to act to address issues can be individually liable for aiding and abetting discrimination and harassment.

Similarly, managers who respond in a negative way to an employee's opposition to illegal behavior in violation of the EEO laws can be held individually liable for retaliation under some states' laws.

*(Note to facilitator: You will want to be able to address whether there is individual liability in the states in which your Company has a presence.)*

### **Transition**

Now that we've defined what the law considers harassing or discriminating behavior, let's look at how to identify when those behaviors occur.

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### POWERPOINT® SLIDE #29

#### PART 2:

#### Identifying Sexual Harassment, Gender Discrimination and Retaliation Issues (30 minutes)

##### Transition to Video

- Now you are familiar with some of the legal terms describing discrimination, harassment and retaliation.

*(Note to facilitator: This point in the program would be a good opportunity to discuss the Company's policy.)*

- Next, we are going to look at a video about Trish, a new salesperson. Observe the behaviors of each person.

##### Video and Discussion: *At the Sales Meeting* (15 minutes)

*(Refer Managers to Workbook, page 8)*

Managers should make sure to note their thoughts in response to the questions while watching the video.

##### Play Video Segment: *At the Sales Meeting*

##### Discuss Questions/Answers as a Group

##### Goals for Discussion

- Understand both *quid pro quo* sexual harassment and hostile work environment.
- Describe the distinction between a compliment and harassment.
- Understand the concept of welcomeness.
- Understand the issues associated with Company-sponsored and non-Company-sponsored events.
- Understand, from the manager's perspective, what is an appropriate response to a complaint.
- Understand the employee's obligation to speak up and complain under, if applicable, our Company's policy; this supports the policy as well as helps the Company address any issues that need to be resolved.

##### Question 1

What inappropriate behaviors did you see while Trish was talking to her co-workers?

##### Look for:

- Gives Trish the "elevator eyes."
- Physical touching.
- Comments about her clothes.
- Comments with sexual innuendo: "She's hot."
- Comments about the other female employee's success/attire.
- Comments about getting into the "President's Club."
- Comments about after-hours partying and the "professionals."

##### Question 2

What type(s) of harassment did you observe in this situation?

##### Look for:

- Hostile work environment harassment by her co-workers (and perhaps Trish's boss, too).
- *Quid pro quo* sexual harassment by Trish's boss.





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### Question 3

What did Trish do or say to indicate she found the behavior of her co-workers to be offensive or unwelcome?

#### Look for:

- Crossed her arms.
- Pulled away.
- Tried to change the subject.
- Left the room.

### Question 4

Do you think a “reasonable person” would have been offended by the behaviors of Trish’s co-workers? Do you think her co-workers intended to offend her?

#### Look for:

- It’s fairly safe to say that most would conclude that a “reasonable person” would be offended in this scenario.
- Whether or not her co-workers meant to offend Trish is not the issue. What matters is the impact of their behavior on Trish.

### POWERPOINT® SLIDE #30

*(Note to facilitator: Show PowerPoint® slide #30 and note that intent is not a requirement. Rather, illegal harassment can arise from unintentional behavior.)*

### Question 5

Does it matter that this behavior occurred outside of the office?

#### Look for:

- The individuals still had their name tags on and were talking about work even though the meetings were done.
- Social events can be part of “work.”
- The employer must address the inappropriate behavior, regardless of whether it takes place at a Company-sponsored function or at another event, if it has a negative impact on the work environment.
- Even if this is not a Company-sponsored event, the individuals were all co-workers and the inappropriate behavior inevitably will affect their work environment.
- Any where a manager is with all (or a group of almost all) employees discussing work topics *could* be considered work.

### Question 6

What inappropriate behaviors did you see when Trish talked to her manager?

#### Look for:

- Tells her that “boys will be boys.”
- Tells her that she’s “making too big of a deal out of this.”
- Gives Trish “elevator eyes” and touches her inappropriately.
- Tells her the conference rule: “What happens here, stays here.”
- Comments about how she could be the top seller and the need for “one-on-one” time.



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### Question 7

What should the manager have done?

#### Look for:

It is the manager's job to encourage people to speak up, take the situation seriously and model good behavior.

Managers need to be calm, caring and collect the facts: who, what, when, where, how and if there were any witnesses. Be neutral, and limit questions to fact finding. For example, some victims find "why" questions that probe for motives for behavior suggest the victim is to blame. Instead, ask questions like, "Are there any other details I need to know?"

Be sure to communicate to the employee that:

- Our Company takes employee concerns seriously.
- You hear what the employee is saying.
- Explain the next steps that will be taken to investigate (and, if appropriate, take action) regarding the situation.
- Assure the employee that our Company prohibits retaliation against them for bringing a concern forward.

### Question 8

Does the way this manager handled the situation create any issues for the Company or for him individually?

#### Look for:

The manager's actions could expose him to individual liability (depending on the state law) for harassment and retaliation. And, since his actions are assumed to be the actions of the Company because he is a manager, he may be creating liability for the Company, both because of his own bad conduct and because he failed to properly address bad behavior by the other employees about which he was aware.

### Question 9

Could Trish have done or said more in these situations? Did she need to?

#### Look for:

- Yes, Trish could have done and said more.
- No, she didn't need to.

*(Note to facilitator: There should be good discussion among the audience about whether Trish has an obligation to come forward. Ultimately, it needs to be pointed out that under the law, she is not required to come forward. If she can prove that it would be futile to make a complaint [because, for example, her boss wouldn't take it seriously], then she does not have to do so before making a formal claim [in court or with an EEO state or federal agency]. If Trish can prove that complaining would be futile, then she can still be successful in a lawsuit even though she didn't complain.]*

#### Ask:

What are some reasons she might not have said more?

#### Look for:

- She was new to the organization.
- The comments took her by surprise.
- She was embarrassed.



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### POWERPOINT® SLIDE #31

#### Discussion: Why Don't People Speak Up? (5 minutes)

(Refer Managers to Workbook, page 9)

Individuals often do not complain about workplace harassment, discrimination, retaliation or other forms of disrespect. Below are some common reasons why people who have been harassed and/or discriminated against often stay silent about their experiences. Ask, "Can you think of any others?"

**No one will believe me.** Individuals who have experienced harassment, discrimination, disrespect or retaliation may be reluctant to report misconduct because they are afraid no one will believe them. Particularly when sexual favors are solicited in exchange for a job benefit, no witnesses may be available to verify what happened.

**I am embarrassed and afraid I will be blamed.** Individuals may be concerned their own behavior is going to be closely scrutinized to see if they "asked for it." In addition, the individual may be embarrassed about what happened.

**Whom would I tell?** An individual may be unaware that our Company has a policy prohibiting harassment, discrimination or retaliation, as well as a procedure for individuals to report problems. More important, an individual may be reluctant to talk to the designated Company representative because he or she has not developed trust in or rapport with that person.

**Nothing will be done or no one will take me seriously.** Individuals may believe nothing will be done about a harassment, discrimination or retaliation complaint, or there may be a concern that any investigation will be a mere formality. In many companies, because the managers and Human Resources personnel cannot talk much about the results of what happens when complaints are brought forward, rumors circulate that nothing happened in response to the issues raised.

**Everyone will find out.** Individuals may be afraid that they will lose their privacy because the situation will not remain confidential. Sexual harassment allegations, for example, can be a juicy topic for office gossip.

**I can handle it on my own.** Individuals may think they can handle the harassment without realizing the physical and emotional impact it may have on them. Even though employee assistance programs, Human Resources or other avenues for help may exist within our Company, the employee may be reluctant to use these resources, believing he or she should "tough it out."

*(Note to facilitator: Remind managers that employees do not have to tough it out; resources are there and available because our Company does not want its employees to suffer. Also remind managers that some resources available to employees—such as employee assistance programs—are confidential.)*

**I just applied for a promotion and I'm afraid I will jeopardize my chances if I complain.** Individuals may be afraid they will suffer retaliation for complaining. Or, a concern they will be branded a "troublemaker," overly sensitive or "not a team player" may make some individuals hesitate to report misconduct.

#### Transition to Next Video

- So far, we have been talking about harassment, discrimination and retaliation by other employees. Conduct by "third parties" such as customers or vendors also may affect a person's work environment.
- Next, we are going to look at a video about Brad, a driver, and his customer, Lisa.



## Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

### Video and Discussion: *Keeping the Customer Happy* (12 minutes)

(Refer Managers to Workbook, page 10)

Managers should make sure to note their thoughts in response to the questions while watching the video.

### Play Video Segment: *Keeping the Customer Happy*

### Discuss Questions/Answers as a Group

#### Goals for Discussion

- Understand the dynamics of customer-based harassment, discrimination, retaliation and/or disrespect.
- Understand the employee's responsibility to speak up or complain when he or she finds certain conduct or comments inappropriate or uncomfortable.
- Understand the employer's responsibility in addressing complaints about the behavior of an employee, customer, vendor or contractor.
- Understand that businesses (i.e., customers) cannot retaliate because an individual employee of our Company complains about inappropriate or offensive behavior.

#### Question 1

What inappropriate behavior did you see happening between Brad (the driver) and Lisa (the customer)?

#### Look for:

- There was no inappropriate behavior by Brad, who tried to remain professional with Lisa.
- Lisa physically touched Brad in an inappropriate manner.
- Lisa's comments about Brad's physical appearance were inappropriate and unwelcome.
- Lisa's threats to pull business from Brad's employer were inappropriate.

#### Question 2

What type of harassment is Lisa engaging in?

#### Look for:

- *Quid pro quo*, based on the threat that she will pull business from Brad's employer.
- Hostile work environment, based on inappropriate touching, sexual innuendos and comments about his physical appearance.

(Note to facilitator: Several PPT slides [#12 and #13 for *quid pro quo* definition and #18 for hostile work environment elements] address this issue. Discuss whether all of those elements are present.)

#### Question 3

For whom is Lisa's behavior creating liability issues?

#### Look for:

- Possibly herself (depending on the state law).
- Lisa's company if she is a manager or if the Company is aware of Lisa's behavior but does nothing to address or correct it.
- Possibly Brad's company if it is aware of Lisa's behavior but does nothing to address or correct it.



## Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

### Question 4

What do you think about how Brad handled the customer? What else might he have done?

#### Look for:

- Brad's reaction was appropriate.
- Point out that Brad was brave to speak up to the customer. Ask the group if they believe the employees they supervise could be like Brad and speak up if they do not like the customer's behavior. If not, what can the managers do to encourage employees to do so.

*(Note to facilitator: Advise the group that if someone is not comfortable speaking up to their own manager, the employees were instructed in their session that they should report issues to any manager and/or designated EEO representative. As a result, all managers have to be ready to field complaints from any employee. Also note there is a high incidence of legal claims in response to managers mishandling these discussions. Consequently, it would be a bad idea for a manager to say [in response to an employee's complaint] that the employee needs to talk with someone else. The employee may not tell anyone else, and the employer still has a duty to address the issue.)*

### Question 5

Did Brad's comments to his manager constitute a complaint requiring action by a manager and the Company? Was his manager's response effective?

#### Look for:

- Although this is an informal conversation with his manager, Brad's comments about Lisa's behavior constituted a complaint.
- The manager's immediate response in this scene was effective, as he clearly communicated to Brad he did not have to put up with Lisa's behavior.
- The manager also effectively encouraged Brad to talk about this concern even though it was a difficult, and possibly embarrassing, situation for Brad.

*(Note to facilitator: This is a good scenario to reiterate that Brad cannot be retaliated against based on his complaint about inappropriate behavior by Lisa, the customer. He should be reminded to tell his manager if Lisa treats him adversely for rebuffing her advances. This is a good opportunity to remind managers what the Company's policy states about prohibiting retaliation.)*

### Question 6

Is this a situation where the manager knew, or should have known, that harassment was occurring?

#### Look for:

Yes, based on Brad's discussion with him, now the manager is on notice of a problem. The Company is also clearly on notice of the unwelcome behavior and needs to take timely and appropriate action to correct it, or there will be legal liability for the Company and potentially the manager.

### Question 7

What else could/should the manager have done? Or, what must the manager do next?

#### Look for:

Follow our Company procedures for dealing with complaints and prohibiting discrimination and harassment.

*(Note to facilitator: Reinforce with the group what these specific procedures are according to the policy. The Company must take all reasonable steps to prevent the harassment and, at the same time, do no harm to Brad.)*



## Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

### Question 8

What if the manager does the things just discussed but, a month later, Lisa's company pulls its business and, shortly after that, Brad is fired. Any issues?

### Look for:

Although the Company addressed Brad's complaint in a timely and appropriate manner, the subsequent action of terminating Brad may support a claim of retaliation, which is a completely separate liability issue for the customer, Brad's company and possibly the individual manager. The Company needs to find a solution that does no harm to Brad.

*(Note to facilitator: Ask the managers to brainstorm about what the solution might be.)*

Preview Only





## Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

### POWERPOINT® SLIDE #32

#### PART 3:

#### Identifying Other Harassment, Discrimination and Retaliation Issues (40 minutes)

- Title VII prohibits more than just sexual harassment and gender discrimination.
- We will now discuss some other forms of harassment, discrimination and retaliation.

#### In this unit we will cover other types of harassment and discrimination:

- Age
- Race
- Color
- Sex
- Disability
- National origin
- Religion

#### Transition to Video

- What can happen when someone “different” comes into the workplace?
- Observe the behaviors between Gloria and Richard in the video.

#### Video and Discussion: *Welcome Aboard* (13 minutes)

(Refer Managers to Workbook, page 12)

Managers should make sure to note their thoughts in response to the questions while watching the video.

#### Play Video Segment: *Welcome Aboard*

#### Discuss Questions/Answers as a Group

#### Goals for Discussion

- Introduction to other “protected classes” as defined by federal and state laws.
- Understand race-based harassment.
- Explain the legal problems that can occur with retaliation.
- Learn that our Company prohibits retaliation following complaints of harassment and/or discrimination.
- Understand the distinction between intent versus impact.
- Explain a person’s obligations to speak up when uncomfortable with another person’s comments or conduct.
- Reiterate behaviors that encourage respect in the workplace.

#### Question 1

What did you think about the comments Gloria made to the new financial analyst, Richard, in the first scene?

#### Look for:

- Gloria did not seem mean or malicious and is probably happy that Richard is there. The problem, however, was that Gloria appeared to focus on the color of Richard’s skin.
- Comments about hiring a “person of color” tend to belittle the person’s qualifications.
- Comments about meeting the “minimum requirements” suggest that people of color are not smart.



## Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

### Question 2

Was there anything “illegal” about Gloria’s comments?

#### Look for:

Typically, a one-time conversation like this will not rise to the level of unlawful harassment because it is not severe or pervasive enough to affect a term or condition of Richard’s employment. However, it certainly may be against Company policy and is not the message you want to convey to a new co-worker. And, the Company needs to stop the conduct before it gets to the level of severe or pervasive.

#### POWERPOINT® SLIDE #33

*(Note to facilitator: Remind managers that the employee must establish the Elements of Harassment.)*

### Question 3

Did Richard regard Gloria’s comments as welcome or unwelcome? How can you tell?

#### Look for:

- Richard regarded Gloria’s comments as unwelcome and inappropriate.
- His facial expressions and body language showed how he felt.

### Question 4

Did Gloria intend to offend Richard? Does it matter?

#### Look for:

- Gloria probably did not intend to offend Richard.
- However, the impact on Richard was that he perceived her behavior as unwelcome and inappropriate.
- There is a difference between intent versus impact. Intent does not matter under the laws regarding harassment, discrimination and retaliation.

### Question 5

When he talked with Mr. Wyatt, Richard specifically said he wanted Mr. Wyatt to be aware of the situation, but he could handle it. By telling Mr. Wyatt, did Richard register a complaint?

#### Look for:

Yes. Mr. Wyatt must follow up on this complaint, following Company procedures. Mr. Wyatt must take action to remedy the problem or there may be legal liability.

### Question 6

Did Mr. Wyatt handle this correctly? What should Mr. Wyatt have done differently?

#### Look for:

- Mr. Wyatt should have explained to Richard that he must follow up according to the Company’s procedures and that no retaliatory behavior would be tolerated by the Company. Mr. Wyatt should also have explained to Gloria not to treat Richard in this manner because it is inappropriate behavior under the law and the Company’s policy prohibiting discrimination, harassment and retaliation.
- Mr. Wyatt also should have told Richard to come back if anything further happens that concerns him.
- This would have been a good opportunity for Mr. Wyatt to build trust by being sensitive to the impact this behavior has on both Richard and Gloria.



## Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

### Question 7

Was Gloria's behavior toward Richard appropriate in the second scene? If not, what should be done about it?

#### Look for:

- Gloria was obviously angry that Richard had spoken to Mr. Wyatt; she was not respectful.
- Gloria did not act as though she understands how her comments impacted Richard.
- Gloria's behavior may be considered retaliation against Richard based on his complaint.
- Gloria could be subject to discipline for retaliating.
- Richard may feel even less welcome.
- Gloria should be disciplined for her retaliatory behavior.

*(Note to facilitator: Consider having the managers brainstorm about how that discussion with Gloria should take place. The key is to be prepared about what she might say and the optimal responses to her that will lead to encouraging her to model respectful behavior.)*

#### Transition to Video

- Gloria demonstrated a lack of understanding and training on inappropriate behaviors in the workplace, resulting in a negative impact on another employee.
- It's important that this is not happening at our Company.
- Next, we are going to look at a conversation in a lunch room.

#### Video and Discussion: **Conversations at Lunch (16 minutes)**

*(Refer Managers to Workbook, page 13)*

Managers should make sure to note their thoughts in response to the questions while watching the video.

#### Play Video Segment: **Conversations at Lunch**

#### Discuss Questions/Answers as a Group

#### Goals for Discussion

- Understand that the law is consistent in terms of hostile work environment between sexual harassment and other forms of harassment.
- Understand that religion and national origin discrimination issues are the new hotbeds of employment litigation.
- Understand the change in workforce demographics and how that impacts employees' need to understand others' differences.
- Understand that employees of private employers do not have the right to free speech at work.
- Understand religious accommodation issues.
- Reiterate behaviors that encourage respect in the workplace.

### Question 1

What do you think about the comments made in the lunchroom? Could these comments alone constitute harassment under the law? What type? Were they appropriate or inappropriate?

#### Look for:

- The comments made were inappropriate.
- The comments may constitute hostile environment harassment based on national origin, religion or gender. Frequency and severity, the impact on the employee's ability to work, and the employer's response to the situation would also be considered.
- The comments violate our Company's policy prohibiting discrimination and harassment, if applicable,



## Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

and/or are disrespectful (if the Company policy would not prohibit the conduct).

### Question 2

Does it matter that the employees in the lunchroom did not know Nadia could hear them?

#### Look for:

- No. It doesn't matter that the employees in the lunchroom did not know Nadia could hear them.
- Their comments were inappropriately focusing on Nadia's religion and national origin, and include gender stereotyping. Speech at work must align with the Company's policy prohibiting discrimination, retaliation and harassment, as well as the law.

### Question 3

What about the one woman's remark to Nadia about "freedom of speech"? Is she correct in her statement?

#### Look for:

No. Employees that work for private employers do not have "freedom of speech" at work.

### Question 4

What if a manager or supervisor had been in the lunchroom and didn't say anything about the rude comments? Would that make a difference?

#### Look for:

Yes. Managers and supervisors have an obligation to take reasonable steps to prevent and correct conduct that may constitute discrimination, retaliation or harassment. By not speaking up, a manager or supervisor could be harming the Company by exposing it to a lawsuit. And, the manager or supervisor may be liable for aiding and abetting discrimination, harassment or retaliation (under applicable state law) if he or she does nothing. Also, letting that type of conduct continue probably will hurt the working environment even if no lawsuit is filed.

### Question 5

If you were a manager in that lunchroom, what should you do and why?

#### Look for:

- Tell the employees to stop.
- Comment on the fact that we all have different customs related to our culture and we need to respect all cultures. Talk about parts of your own culture or background that differ from others, or the things about Nadia's culture that you enjoy.
- Talk about good things that Nadia does at work. For example, it is likely that she performs duties that others do not perform in place of covering the reception desk.
- Note that the law requires companies to accommodate religious beliefs, if the accommodation is necessary and reasonable. Moreover, employees should help each other out, rather than attack one another.
- Change the subject. Let others know that you like and respect Nadia and you do not think it is right to speak disrespectfully about her.
- Note that there are certain aspects of your personal beliefs that you are glad others respect.
- Report the behavior to the manager of the employee who is engaging in the disrespectful behavior.
- These employees should be considered for discipline in an appropriate way (individually, in an office, not in a group setting over lunch).



## Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

### Question 6

If you were a manager in the lunchroom, would you have any obligation to speak with Nadia, if you knew she heard the conversation? If you weren't sure whether or not she heard the conversation?

#### Look for:

- Yes. After speaking with the employees and appropriately reprimanding them for their behavior, follow up with Nadia to let her know that the behavior has been addressed and should not occur again. If applicable, let her know that our Company has a non-discrimination/offensive behavior policy that it takes very seriously, and that it encourages people to speak up when a concern arises. Probe to see if any other situations have occurred that may need to be addressed.
- If Nadia did not hear the conversation, or you're not sure, it would be prudent to talk with her casually, checking in to see how work has been going for her, how she is getting along with her co-workers and how her co-workers have been treating her. Here, too, if any inappropriate workplace behavior comes up, work into the conversation that our Company has a non-discrimination/offensive behavior policy that our Company takes very seriously and that it encourages people to speak up when a concern arises or if people aren't being respectful. Also note the Company is committed to addressing any disrespectful behavior that does occur.

### Question 7

Let's say you are Nadia's manager. What would you do if she asked for permission to pray during the workday? And is it OK for her to wear a hijab at work?

#### Look for:

- You have an obligation under Title VII to provide reasonable accommodation to an employee in connection with his or her sincerely held religious beliefs. Generally, time away from work duties for prayer required by your faith is deemed reasonable (e.g., in the Islamic faith, where prayer is required at certain times of the day).

*(Note to facilitator: Have the managers brainstorm about different ways to handle these requests. The law requires employers to accommodate sincerely held beliefs if the accommodation does not have more than a minimal effect on the employer. While the disability laws require an accommodation unless there is an undue burden or a direct threat of harm, employers may show [in a religious accommodation context] that a requested accommodation is "unreasonable" if it has a more than a minimal negative impact on the employer and/or the work environment.)*

#### Transition to Next Video

Next, we are going to look at a conversation Ray is having with some other employees.

#### Video and Discussion: *His New Bride* (13 minutes)

*(Refer Managers to Workbook, page 14)*

Managers should make sure to note their thoughts in response to the questions while watching the video.

#### Play Video Segment: *His New Bride*

#### Discuss Questions/Answers as a Group



## Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

### Goals for Discussion

- Understand that the law is consistent in terms of hostile work environment between sexual harassment and other forms of harassment, regardless of the gender of the recipient.
- Understand disability harassment and discrimination.
- Understand age harassment and discrimination.
- Reiterate negative impact of disrespectful behavior in the workplace.
- Discuss how a manager should appropriately handle the situation.

### Question 1

What was going on here? What kind of comments did Ray, the older worker, have to listen to? Were they appropriate?

#### Look for:

##### Identifying these inappropriate behaviors:

- Calling him “Gramps.”
- Comments about the age of his wife and comparing his age to hers.
- Comments about being out on disability leave.
- Comments about missing work.
- Comments about taking pills at lunch.
- Comments about Ray “keeping up” with his wife.

### Question 2

Do you see anything wrong with the comments that were made?

#### Look for:

- Yes. These comments were disrespectful and offensive.
- Many of the comments were based on Ray’s age or possible medical condition.
- They also are inappropriate sexual comments because they relate to Ray’s intimate relationship with his wife.

### Question 3

What protected classes did the comments involve? Did this scenario involve harassment?

#### Look for:

- Age
- Disability and
- Sexual harassment are potential issues here.

### Question 4

Would the comments rise to the level of a hostile work environment?

#### Look for:

If this is a one-time incident, it probably is not unlawful, severe or pervasive, but it certainly needs to stop before it has the potential to rise to that level.

*(Note to facilitator: Look at the Elements of Harassment, PowerPoint® slide #33, to remind the managers of the elements an employee must prove to make a legal claim.)*

Regardless of whether the comments constitute a hostile work environment, they are disrespectful and unwelcome by Ray. The comments need to stop.





## Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

### Question 5

Are comments in the workplace about a person's health problems, like Ray's back trouble, a cause for concern? Why or why not?

#### Look for:

- Yes. Employees should not joke about a person's medical condition. Not only is it disrespectful, but it may also violate the Americans with Disabilities Act (ADA), the ADA Amendments Act of 2008, and/or state discrimination laws if the condition meets the legal definition of "disability," generally a very fact specific assessment.

*(Note to facilitator: The 2008 amendments to the ADA [effective January 1, 2009] make it much easier for an employee to successfully make a legal claim for disability discrimination.)*

- Note that even if an employee does not meet the definition of disability under the law, if he or she is regarded by his or her employer as disabled, he or she has protection under the law.

Here, these co-workers' statements may be evidence of Ray being regarded as disabled.

### Question 6

What impact are these comments likely to have on Ray? What is the impact on the team? What is the impact on the business as a whole?

#### Look for:

- Impact on Ray: Anger, frustration, decreased productivity.
- Impact on team: Decreased productivity, negative impact on teamwork.
- Impact on business: Higher turnover rate (Ray may leave the Company), higher absenteeism (Ray may call in sick more often). If this situation occurs enough, Ray may make a claim against the Company and/or the individuals who allowed it to happen, including managers.

### Question 7

What should a manager do who is involved in this situation (saw it or the employees reported it)?

#### Look for:

- Tell the employees to stop.
- Comment on the fact that it's disrespectful (and in some cases illegal) to discuss Ray's personal situation at work.
- Remind employees of the importance of maintaining a respectful work environment.
- Report the employees to their manager if it's someone other than you.
- These employees should be considered for discipline in an appropriate way.

### POWERPOINT® SLIDE #34

#### Transition

- Managers play a very important role in identifying and preventing and addressing harassment, discrimination, retaliation and other disrespectful behavior.

### POWERPOINT® SLIDE #35

- Managers are also in a unique position, different from employees, in regard to these issues.
- Managers must enforce our Company's policy. And, managers must be role models, not only of what is legal, but also of compliance with our Company's policy and respect values generally. Remember, compliance with the law, by itself, is not enough. Managers must ensure that conduct meets our



## Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

Company's obligations under the law, and expectations under the policy and our respect values.

**Questions (3 minutes)**

- Are there any questions about our expectations of you as managers, or your obligation under the law or our Company policy?

*(Note to facilitator: Take this time, prior to the post-test, to clarify any issues about manager obligations. If there are no questions, ask managers to brainstorm about how they can support one another in meeting their obligations as managers. Call on managers individually if there is no group discussion, asking what support the individual manager needs or can offer to others.)*

Preview Only



## Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

### Post-Test (15 minutes)

- Let's take a few minutes to review what we've learned today.
- Administer post-test.
- Review answers as a group.

*(Note to facilitator: The post-test and answer key can be found on the Support Materials CD-ROM.)*

Preview Only



## Creating the Respect Effect: Preventing Harassment, Discrimination and Retaliation

### Summary and Ending (1 minute)

- Thanks for coming today.
- We've covered a lot of information.
- Important action items to remember:
  - Managers play a very important role in preventing and addressing harassment, discrimination, retaliation and other disrespectful behavior.
  - Managers are also in a unique position, different from employees, in regard to these issues.
  - Managers must enforce our Company's policy. And, managers must be role models, not only of what is legal, but also of compliance with our Company's policy.
- Now that you know about preventing harassment, discrimination and retaliation, you can be a role model. Your respectful behavior toward others goes a long way in creating a positive work environment.
- Your effective responses to challenging situations also support creating a *Respect Effect* in our workplace.

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