



Courts in the Era of #WeToo

MODULE 1

Fundamentals of Sexual and Gender-Based Harassment Affecting Judicial Environments

Segment A: Sexual and Gender-Based Harassment & Its Impact on Judicial Operations & Culture

As a result of this segment, participants will be better able to:

- Define sexual and gender-based harassment and identify its impact on judicial system operations and culture.

U.S. Equal Employment Opportunity Commission (EEOC)

EEOC is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's:

- Race;
- Color;
- Religion;
- Sex (including pregnancy, transgender status, and sexual orientation);
- National origin;
- Age (40 or older);
- Disability; or
- Genetic information

EEOC Definition of Harassment

Harassment can include 'sexual harassment' or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.

Do you think the EEOC definition covers all of the ways sexual harassment can manifest in a workplace? Why or why not?

Sexual harassment is discrimination.

EEOC-actionable sexual harassment is discrimination on the basis of sex, including sexual orientation, gender identity, or pregnancy.

This typically includes comments about a person's sex that are not of a sexual nature, such as voicing generalities about an entire sex.

What about sexual orientation & gender identity?

Discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex; the first cannot happen without the second.

- Bostock v. Clayton County, Georgia

When is sexual harassment “not very serious?”

According to the EEOC, “the laws enforced by EEOC do not prohibit simple teasing, offhand comments, or isolated incidents that are not very serious.”

- For workplace harassment to be illegal, the conduct must either be:
 - Severe (meaning very serious); or
 - Pervasive (meaning that it occurred frequently).

“One instance of harassing conduct is generally not sufficient, unless the conduct is very serious, such as a physical assault.”

**Challenge: What is “simple teasing?” What are “offhand comments?”
When are incidents “isolated” and “not very serious?”**

Generally

- EEOC-actionable harassment:
 - Creates a hostile or offensive work environment; or
 - When it becomes a term or condition of employment (such as being promoted for acquiescing, fired or demoted for rejecting, or retaliated against for reporting).
- Many states have agencies and/or ethics entities that also enforce anti-sex discrimination laws covering sexual harassment.
 - **Be on the lookout for state-specific processes and reporting deadlines applicable to public and judicial employees.**

Small Group Discussion

Your small group has been appointed to a committee to create or revise your judicial environment's anti-sexual and gender-based harassment policy.

Please develop a short definition of sexual and gender-based harassment and provide examples of the conduct that your definition prohibits.

Large Group Discussion

What characteristics unique to judicial environments make it particularly challenging to prevent and respond to sexual and gender-based harassment?

Segment B: Root Causes: Power & Control in Judicial Environments

As a result of this segment, participants will be better able to:

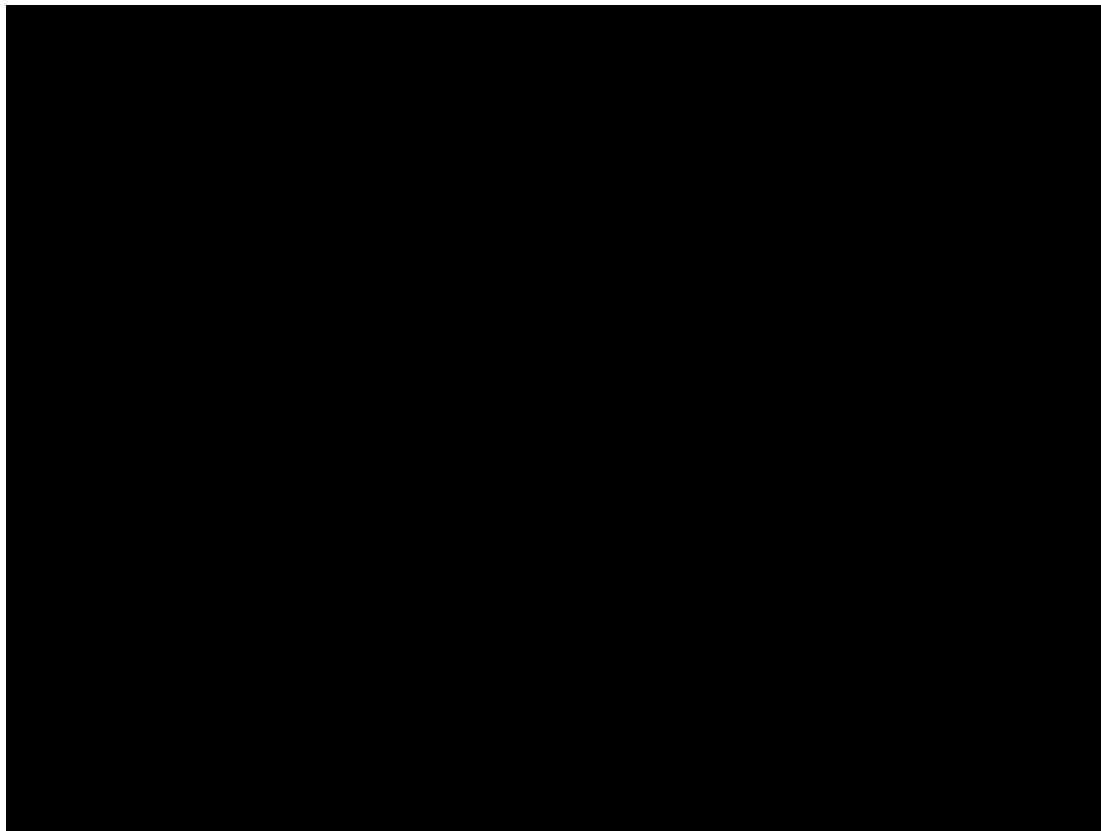
- Examine and distinguish the root causes of sexual and gender-based harassment that are particularly pervasive in judicial system contexts.

Individual Reflection

Reflect on a time when you experienced or witnessed something that you know was illegal, wrong, and/or inappropriate, but you felt powerless to address it.

Jot down a few words describing how it made you feel.

Video



Small Group Discussion

Attorney

Court Reporter

Juvenile

Power & Control

- Sexual and gender-based harassment is not about the pursuit of sex; it is about asserting power and control.
- Violence and harassment rooted in power and control is a form of oppression based on historic marginalization.
- People who use violence or harassment often seek to diminish and dehumanize others.

Power & Control

- Physical violence and sexual violence
- Emotional or psychological abuse
- Intimidation
- Coercion and threats
- Isolation
- Economic abuse
- Minimizing, denying, and blaming
- Use of privilege

Small Group Discussion

How do power & control tactics impact:

- The ability of someone experiencing sexual and gender-based harassment to continue working
- The ability of someone perpetrating sexual and gender-based harassment to continue working
- Their coworkers and their workplace in general
- Their families and communities