



Courts in the Era of #WeToo

MODULE 1: Fundamentals of Sexual and Gender-Based Harassment Affecting Judicial Environments [3 hrs.]

Segment A: Sexual and Gender-Based Harassment & Its Impact on Judicial Operations & Culture [75 mins.]

- **Large Group Discussion: EEOC Definition [10 mins]**

Trainers will provide background about the U.S. Equal Employment Opportunity Commission (EEOC) and present its definition of sexual harassment:

- The [U.S. Equal Employment Opportunity Commission](#) (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.”
- “The laws apply to all types of work situations, including hiring, firing, promotions, harassment, training, wages, and benefits.”
- Workplace is held accountable, not individual bad actors.
- Definition: “Harassment can include ‘sexual harassment’ or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.”

Trainers will facilitate a Large Group Discussion, and record answers via flipchart, by asking:

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

Note: It may be helpful to remind participants that the EEOC is “responsible for enforcing federal laws that make it illegal to discriminate,” and that there may be insidious ways to discriminate based on sex that fall through the cracks of the EEOC’s baseline definition.

See: EEOC’s updated [Enforcement Guidance on Harassment in the Workplace](#)

The goal is not to convince participants to criticize or outright reject the EEOC definition, but rather to consider tailoring a policy that defines sexual harassment in a manner consistent with the needs and expectations of their respective judicial environments and communities.

- **EEOC Learning Points [10 mins]**

Trainers will review the following learning points:

- The jurisdiction of the EEOC and its state equivalents are generally rooted in anti-discrimination law; 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.
- In *Bostock v. Clayton County, Georgia*, 590 U. S. 644 (2020), the Supreme Court explained, “discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex; the first cannot happen without the second.”
- [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?”

Note: Faculty do not need to spend much time on these challenging questions. They can be raised merely as questions for participants to consider or faculty can solicit a few responses and move on to the next slide.

- [Per the EEOC](#), harassment is actionable when it 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).
- **Challenge:** What constitutes a “workplace?” Is workplace harassment limited to actions that take place in the courthouse complex? Where else might workplace harassment happen? Does the court workplace extend to court services? What about staff that work remotely?
- 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: Tailored Definition [15 mins]**

Trainers will ask participants to convene into small groups and discuss the following prompt:

- 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.

Note: Encourage small groups to write their definition and examples on separate sheets.

Offer the following sample definition as a guide:

- Sexual harassment involves any unwelcome sexual advance, request for sexual favors, or verbal, written, electronic, or physical conduct of a sexual nature by a manager, supervisor, co-worker, or non-employee (third party). Managerial harassment occurs when a manager or a supervisor gives or withholds a work-related benefit in exchange for sexual favors from a victim or takes an adverse action against an employee for refusing a request for sexual favors. In some circumstances, threatening to take such actions may also be a violation of this policy.
- Certain actions may also create a hostile work environment. Hostile work environment harassment occurs when a victim is subjected to severe or pervasive comments or conduct based on race, color, national origin, age (40 and over), sex, pregnancy, religion, creed, disability, veteran's status, or any other category protect by state and/or federal civil rights laws; resulting in a work environment that a reasonable person would consider hostile. A hostile work environment may also be created by innuendoes, touching, electronic communications, or other conduct.

Note: If small groups have trouble getting started, faculty may provide some of the following prompts:

- Groups should consider what conduct they feel should be covered by the policy.
- Be careful to use plain language instead of relying on legalese.
- Think about how power dynamics may affect the definition of sexual and gender-based harassment.
- What about non-verbal conduct/behaviors? Can they be harassment?
- Consider how tolerance of certain behaviors, such as offhand comments, may create a culture where a hostile work environment is accepted? At what point, if at all, does such tolerance and acceptance of offhanded comments become prohibited conduct?

- **Small Group Discussion: Report Back [15 mins]**

Trainers will ask participants to report back their definitions and examples, and will record highlights from these definitions on a flip chart. Trainers do not need to record the entire definitions and can skip over examples also covered by previous groups in order to avoid repetition and simplify the process. At the conclusion of their reports, trainers may attempt to consolidate these responses into a consensus definition and then seek the large group's overall consensus, which may be recorded on a flip chart and displayed on a wall in the training space for the duration of the training.

- **Large Group Discussion: Judicial Environment Challenges [10 mins]**

Trainers will ask the following question and record highlights of participant responses on a flip chart:

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

Note: While participants are responding, trainer should note (perhaps by underlining with a different color) all of the individual roles within a judicial environment mentioned (e.g., judges, administrators, clerks, security, bailiffs, attorneys, court appointed attorneys, court reporters, court support staff, and the general public).

Trainers may want to prompt participants by asking about power dynamics within the courthouse such as those between staff and the chief, administrative, or presiding judge or challenges related to elected or appointed positions.

- **Large Group Discussion: Impacts [15 mins]**

Trainers will transfer individual roles underlined or otherwise noted in the last exercise to another flip chart sheet. Trainers will ask participants if the list is complete with respect to persons who could potentially experience – or perpetrate – sexual and gender-based harassment in a judicial environment and add any additions.

Once the list is as complete as possible, trainers will ask participants to reflect on each role listed and identify how experiencing – or

perpetrating – sexual and gender-based harassment would impact individuals occupying any particular role. If the list is particularly long, trainers may want to group similar roles together or only ask about the top 10 roles on the list.

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Segment B: Root Causes: Power & Control in Judicial Environments [75 mins.]

- **Individual Exercise [10 mins]**

Trainers will ask participants to individually reflect on the following prompt and use a piece of paper to record their reflections. Take care to inform participants that – although they will be asked to report back their thoughts if they feel comfortable – the paper will not be collected in order to preserve their privacy.

- Reflect on a time when you experienced or witnessed something in a court environment 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.

After 2 to 3 minutes of individual reflection, Trainers will then ask a few participants to voluntarily share their reflections and focus on how the circumstance made them feel rather than specific details.

- **Video & Small Group Discussion [30 mins]**

Trainers will introduce a [2018 news clip](#) as a situation where many witnessed a judge's misconduct, and found it difficult to address it.

For Trainers' information, the news clip is about a county judge who was accused of:

- Winking at an attorney who is a woman, and later calling her to the bench to ask her if she saw him winking at her;
- Later telling that same attorney that "her parents did not 'spank' her enough as a child;"
- Bringing a court reporter into chambers and telling her, "You are hot;" and
- In a juvenile case, saying about a young woman who appeared in his court several times, "She used to be really cute, back when she was 14. I remember thinking that girl should be a cheerleader or something."

The judge's attorney called the allegations "character assassination" and "totally out of character." He suggested that the allegations arose from misgivings among public defenders.

After showing the video, Trainers will ask participants to convene into small groups and discuss the following prompts. Depending on the number of groups, trainers may opt to ask certain groups to focus on one particular allegation:

- **Attorney-Involved Allegation**

- Is winking at someone – and later confirming that they saw the wink – appropriate conduct in a judicial environment? Why or why not?
- Is telling someone that their parents did not 'spank' them enough as a child appropriate conduct in a judicial environment? Why or why not?
 - Consider circumstances when a pattern of conduct may be required - and may not be required - for such comments to be actionable.
- If it is inappropriate, is such conduct sufficiently "of a sexual nature" per the EEOC definition of sexual harassment? If not, what should a definition of sexual harassment include in order to cover such conduct?
- If the attorney were unaware of other incidents involving this judge, what is the likelihood that they would respond to or report the incident? What factors would likely influence their decision?

- **Court Reporter-Involved Allegation**

- Calling an employee or a contractor "hot" is objectively sexual harassment. But what did the judge seek to communicate by allegedly calling the court reporter into his chambers in order to make this comment?
- If the court reporter was unaware of other incidents involving this judge, what is the likelihood that they would respond to or report the incident? What factors would likely influence their decision?
- What if they were pulled aside and called "hot" by another court reporter? Would it impact the court reporter differently? How so?

- **Juvenile-Involved Allegation**

- A judge calling someone appearing before them, especially a juvenile, “really cute” or suggesting they become a “cheerleader” is objectively sexual harassment. Does it matter if the judge attested that it was a “compliment” relevant to the case, i.e., as encouragement to pursue cheerleading?
- If the juvenile were unaware of other incidents involving this judge, what is the likelihood that they would respond to or report the incident? What factors would likely influence their decision?
- What if court security approached the juvenile and said the same words? Would it impact the juvenile differently? How so?

Trainers should reserve at least **10 minutes** for groups to report back a summary of their respective discussions.

- **Learning Points: Power & Control [10 mins]**

Trainers will review the following learning points:

- Sexual and gender-based harassment is not about the pursuit of sex. Like other forms of gender-based violence and harassment (e.g., domestic violence, sexual assault, and stalking), sexual and gender-based harassment is about asserting power and control. That is why sexual and gender-based harassment is considered a form of sex discrimination.
- People bring their whole selves, identities, and life experiences to work (e.g., trans persons are disproportionately subject to harassment in all aspects of society; statements made in the workplace have a compounding impact).
- Violence and harassment rooted in power and control is a form of oppression based on historic marginalization and social conditioning of entitlement. People who use violence or harassment often seek to diminish and dehumanize others.

- Consider the judge who called a juvenile “really cute” and suggested they become a “cheerleader.” Such comments are rarely directed toward men.
- Power and control tactics include: physical violence; sexual violence; emotional or psychological abuse; intimidation; coercion and threats; isolation; economic abuse; minimizing, denying, and blaming; use of children; and use of privilege.
- In the context of sexual and gender-based harassment, examples of power and control tactics may include:
 - Physical violence and sexual violence: Groping; blocking another’s exit
 - Emotional or psychological abuse: Repeated unwanted advances; gaslighting the target to disbelieve that what they are experiencing is wrong
 - Intimidation: Using one’s power and stature to deter others from standing up for themselves
 - Coercion and threats: Putting another’s physical or job security at risk
 - Isolation: Marginalizing another in work assignments and promotion opportunities because they resisted or reported advances
 - Economic abuse: Exploiting the target’s known concerns of losing income because they resisted or reported advances
 - Minimizing, denying, and blaming: Demanding that the target “lighten up;” casting blame based on another’s choice of clothing or failure to immediately resist
 - Use of privilege: Using the levers of one’s own stature, position, and/or power to skirt responsibility, discredit their target, and/or manipulate reporting systems

Source: Workplace Power & Control Wheel, as adapted by WeToo Curriculum drafters

Note: Trainers may opt to connect these behaviors back to that of the judge in the video, and/or weave an anecdote based upon their personal experiences in order to help participants better understand the learning points.

Trainers will then present the Workplace Power & Control Wheel.

- **Small Group Discussion: Workplace Power & Control Wheel & Report Back [25 mins]**

Trainers will ask participants to convene into small groups and use the Workplace Power & Control wheel to consider the following. Depending on the size of the group, trainers may assign one or two spokes to each group:

- How might each (or assigned) power & control tactic(s) impact:
 - A victim of sexual and gender-based harassment
 - A perpetrator of sexual and gender-based harassment
 - The coworkers of victims and perpetrators, and their workplaces in general
 - The capacity of victims, perpetrators, and coworkers to maintain their employment status
 - Families and communities
 - Consider how judicial environments with a smaller number of employees are impacted differently

Note: At least 5 minutes should be reserved for several groups to report back on their discussions, taking care to avoid repetition by asking for only responses not offered by previous groups.