

## Sensitivity Training:

Recognizing and Preventing  
Discrimination and Harassment in the Workplace

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# Discrimination



# What is Discrimination?

- It is unlawful to discriminate against an employee based on his or her membership in a *protected class*.
- Protected classes include:
  - Race
  - Age
  - Disability
  - Religion
  - Gender
  - National Origin
  - Pregnancy
  - Sexual Orientation
  - Genetic Information
  - Equal Pay / Compensation



# What Constitutes Discrimination?

- **Discrimination is:**
- Any adverse personnel action taken because of an employee's membership in a protected class.
- **Adverse personnel action include:**
  - Firings
  - Change in Job Assignments
  - Discipline
  - Denial of promotion
  - Hours of work
  - Disparate Application of Rules
  - Failure to Hire

# Americans With Disabilities Act

- Prohibits discrimination against qualified individuals with disabilities
  - *Actual disability*
    - Physical or mental impairment that substantially limits one or more major life activities
  - *Record of Disability*
  - *Perception of Disability*
- Requires employers to provide reasonable accommodations to qualified individuals with disabilities



# Age Discrimination in Employment Act



- Prohibits discrimination against individuals who are forty (40) years of age or older.
- The ADEA specifically prohibits:
  - Age preference or limitations in job postings
  - Denying older workers benefits
  - Targeting older employees for layoffs

# The Pregnancy Discrimination Act



- Amendment to Title VII of the Civil Rights Act of 1964
- Discrimination on the basis of pregnancy, childbirth, or related medical conditions constitutes unlawful sex discrimination under Title VII

# The Pregnancy Discrimination Act

- Hiring and working conditions: An employer cannot: (1) refuse to hire a woman because of her pregnancy related conditions as long as she is able to perform the major functions of her job; (2) refuse to hire her because of prejudices against pregnant workers or because of the prejudices of co-workers, clients, or customers.
- Pregnant employees must be permitted to work as long as they are able to perform their jobs.
- If an employee is temporarily unable to perform her job duties due to pregnancy, the employer must treat her the same as any other temporarily disabled employee by, for example, providing light duty, modified tasks, alternative assignments, disability leave, or leave without pay.



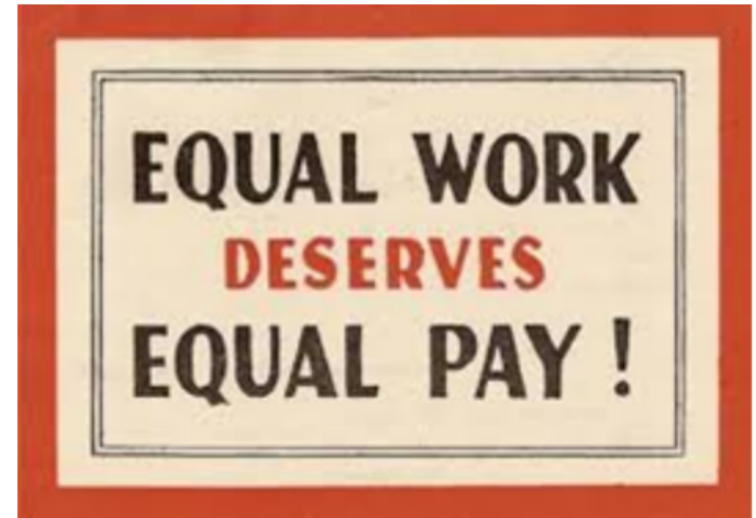
# The Genetic Information Nondiscrimination Act of 2008 (GINA)



- Under Title II of GINA, it is illegal to discriminate against employees or applicants because of genetic information.
- GINA prohibits the use of genetic information in making employment decisions, restricts employers and other cover entities from requesting, requiring, or purchasing genetic information, and strictly limits the disclosure of genetic information.
- Genetic information includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about the manifestation of a disease or disorder in an individual's family members.

# The Equal Pay Act of 1963

- The Equal Pay Act requires that men and women in the same workplace be given equal pay for equal work.
- All forms of pay are covered by this law, including salary, overtime pay, bonuses, stock options, profit sharing, life insurance, vacation and holiday pay, hotel accommodations, reimbursement for travel expenses, and benefits.
- If there is an inequality in wages, employers may not reduce the wages of either sex to equalize their pay.



A customer refuses to deal with a company employee because the employee is black. The company can transfer the employee to another division in order to satisfy the customer.

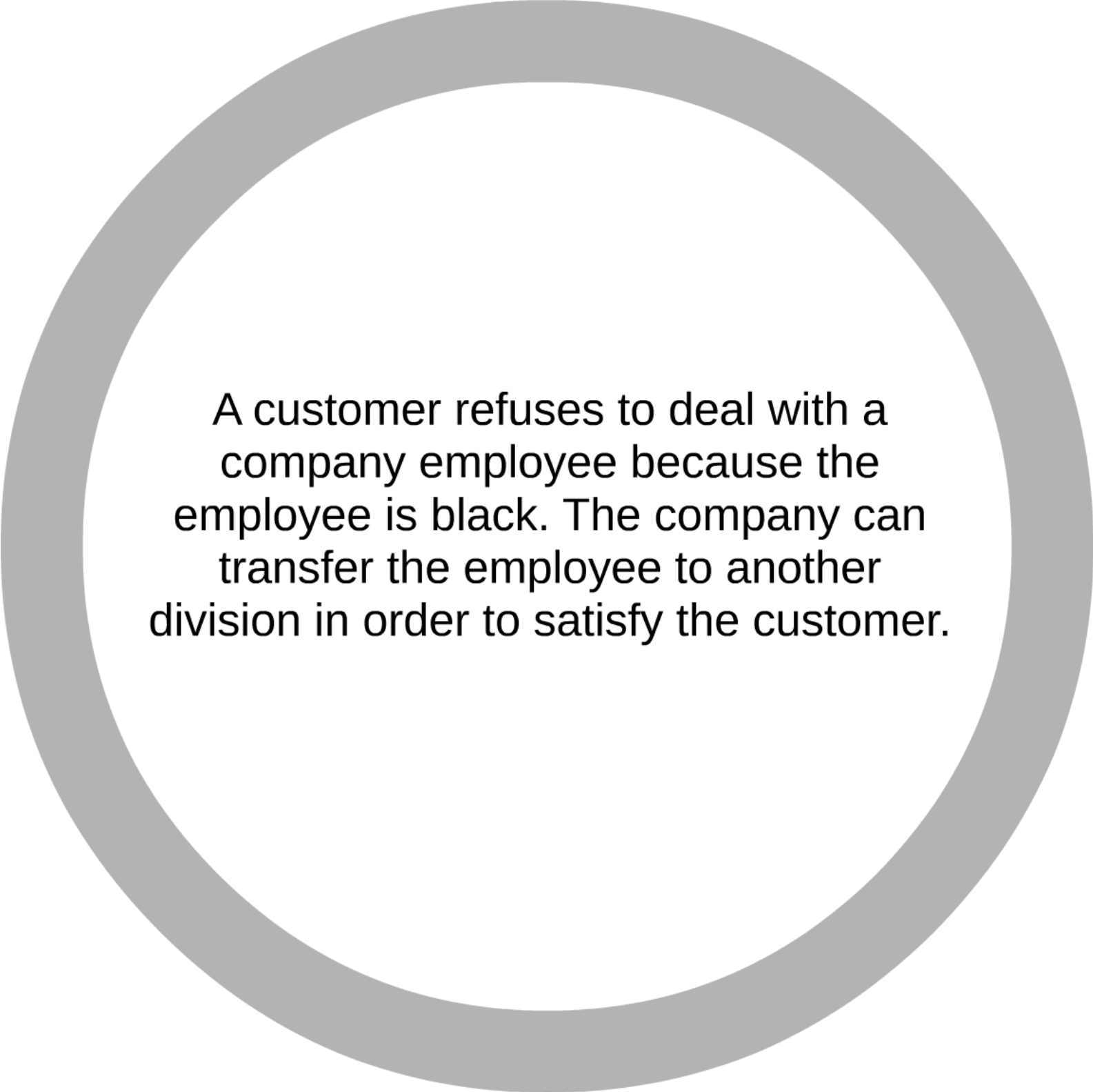


ABC Company has a young manager who is always making comments and jokes about 3 employees who are age 55, 58, and 60, and keeps talking about the need to hire "younger and brighter employees." In a recent reorganization, 4 employees were dismissed, including the 3 older employees. ABC Company has a right to decide how to restructure.

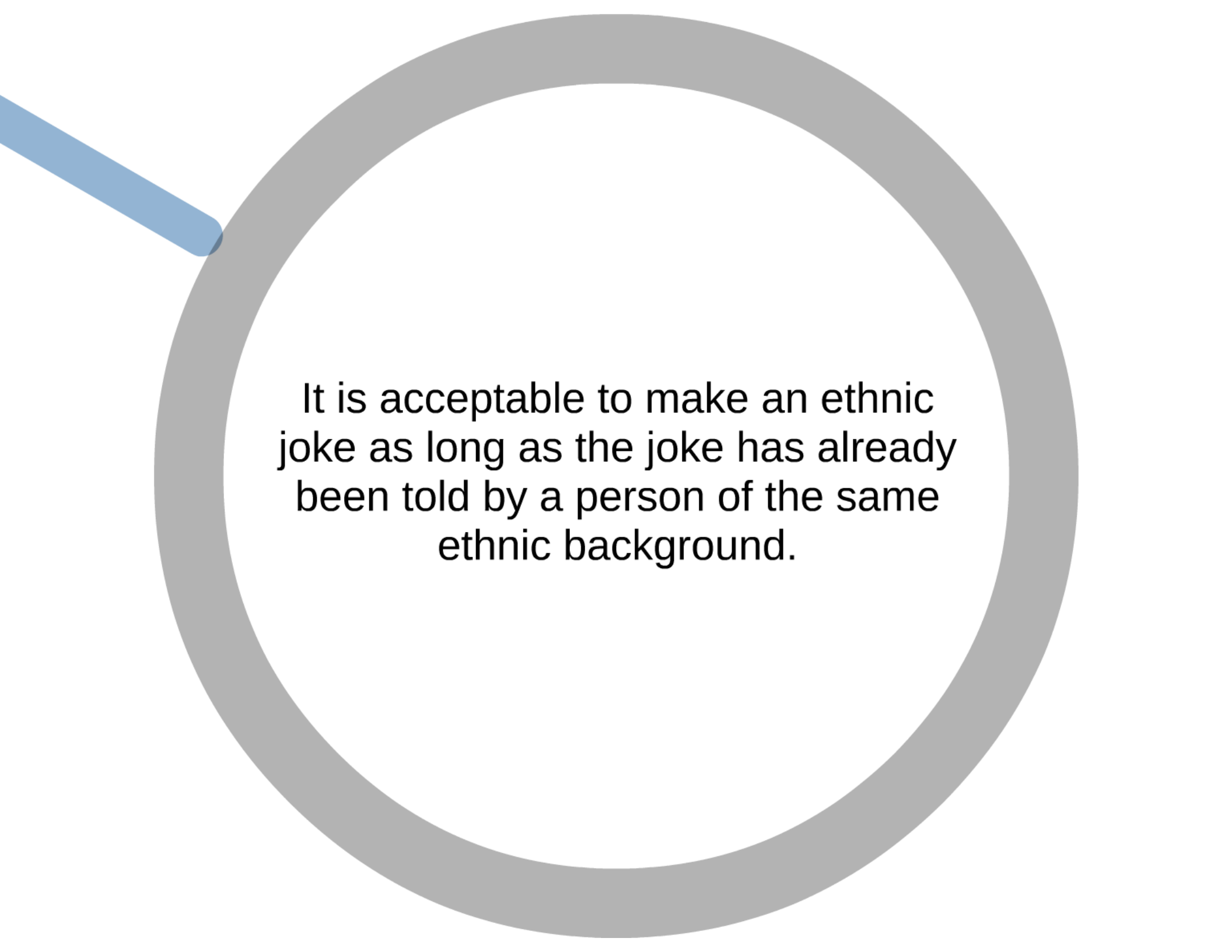
It is acceptable to make an ethnic joke as long as the joke has already been told by a person of the same ethnic background.



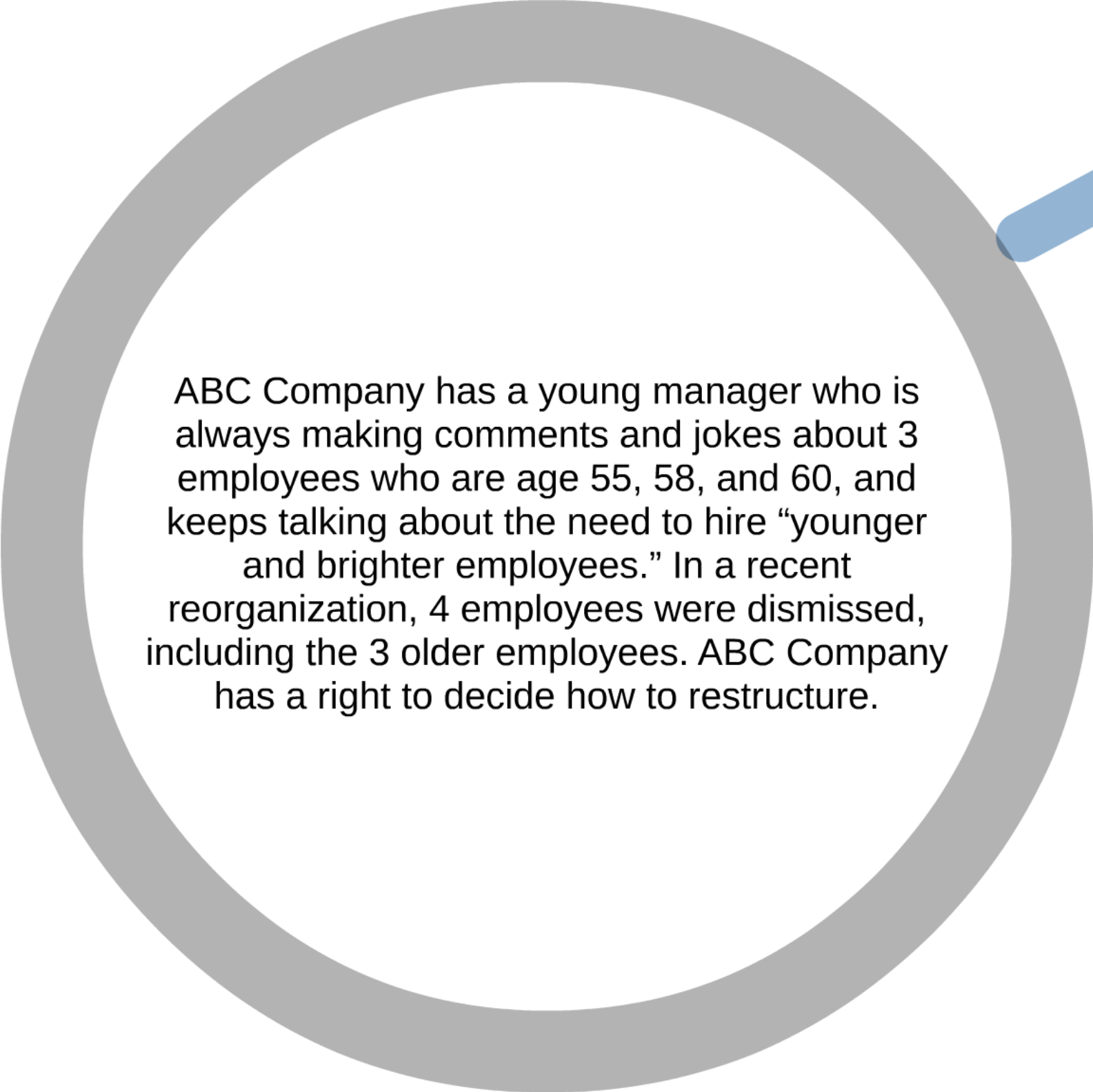
TRUE  
or  
FALSE?



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# Harassment





# What is Harassment?

- Harassment is a form of discrimination.
- Most commonly, harassment claims involve sexual harassment, but they can also involve harassment on the basis of race, religion, national origin, etc.



# Harassment Includes

- Verbal abuse.
- Physical abuse, including inappropriate body contact.
- Threats.
- Derogatory remarks.
- Dirty or otherwise offensive jokes.
- Display of pornographic, racist or offensive material.
- Practical jokes that result in awkwardness or embarrassment.
- Unwelcome innuendoes, invitations or advances.
- Making someone feel uncomfortable because of a physical characteristic.

# Who Can Commit Harassment? **Anyone.**

- Harassers can be male or female.
- Men can harass men or women and women can harass men or women.
- Harassers can be supervisors, managers, or co-workers.
- Harassers can be persons outside the company (i.e. customers, vendors, or anyone visiting the workplace).



# Who Can Be Subjected to Harassment? **Anyone.**

- Harassment may be:
  - Male to female
  - Female to male
  - Same sex
  - Supervisor to subordinate
  - Subordinate to supervisor
  - Co-worker to co-worker
  - Third-party to employee
  - Employee to third-party

# Consequences of Harassment

- Low employee morale
- Absenteeism
- High turnover
- Stigma
- Legal Costs
- Monetary damages



# Two Types of Harassment

1. Quid Pro Quo



2. Hostile Work Environment



# Quid Pro Quo Sexual Harassment

- “This for that” in Latin.
- Requests for sexual favors are linked to a grant or denial of tangible job benefits (promotion, favorable performance review, etc.)
- Usually involves an express or implied threat that if the employee refuses the sexual advance, a **tangible employment action** will occur.
- Does not require explicit statement—can be inferred from words and/or conduct.

# What is a Tangible Employment Action?

- **A significant change in employment status, such as:**
  - Hiring
  - Firing
  - Failing to Promote
  - Reassignment with significantly different responsibilities
  - Decision causing a significant change in benefits





# Examples of Quid Pro Quo Harassment

- “Why don’t you go out with me tonight and we can discuss that promotion you have been asking about.”
- This is the old-school style of harassment and is relatively rare.
- We have become much more sophisticated in the way that we harass people now.



# Hostile Work Environment

- A work environment that becomes permeated with harassment such that it creates a hostile environment
- The harassment can be:
  - Verbal
  - Physical
  - Visual
- Tangible employment action is not required
- This type of harassment is typically much more subtle

# Severe or Pervasive

- The harassment must be so severe or pervasive as to alter the conditions of employment.



# What Constitutes Severe or Pervasive Harassment?

- There is no mathematically precise test for harassment

## **Factors to consider:**

- Frequency
- Severity
- Whether conduct is physically threatening or humiliating, or a mere offensive utterance
- Whether conduct unreasonably interferes with an employee's work performance

# Conduct Must Be Unwelcome



- “Unwelcome” and “unwanted” is determined not by what the harasser intends, but by what the victim perceives.
- The victim need not express that the conduct is unwelcome or unwanted.
- Conduct can be unwelcome even if the victim appears to consent.



# Recognizing Physical Harassment



- Standing or sitting too close
- Unwanted touching (hugging, kissing, brushing against, shoulder rubs)
- Making sexual gestures
- Impeding or blocking movement, or any physical interference with normal work or movement, when directed at an individual
- Following someone around
- Giving unwanted romantic cards, letters, or gifts

# Recognizing Visual Harassment



- Displaying offensive items or photos
- Distributing or displaying sexual photographs, cartoons, drawings, or other materials
- E-mailing sexual jokes or stories
- Looking someone up and down/staring



# Technology Makes Your Life Harder

- With the development of smart phones, electronics, and other social media, our ability to harass has increased
- The key is **respect** and **sensitivity**
- Rule of Thumb:
  - If you would not do something in front of your parents, your children, or your spouse...  
**DON'T DO IT AT WORK!!!**

# If You are Harassed or Witness Harassment

- Immediately indicate that the conduct is unwelcome or offensive (the harasser may not realize his/her behavior is inappropriate)
- Ask the harasser to stop
- Immediately report the conduct
- Cooperate in an investigation as requested

# Retaliation



# Retaliation

- Both federal and state law prohibit any person from retaliating against another for:
  - Opposing any unlawful practice
  - Filing a complaint, making a charge, or participating in any proceeding




There must be an intention to discriminate in order to be guilty of harassment.

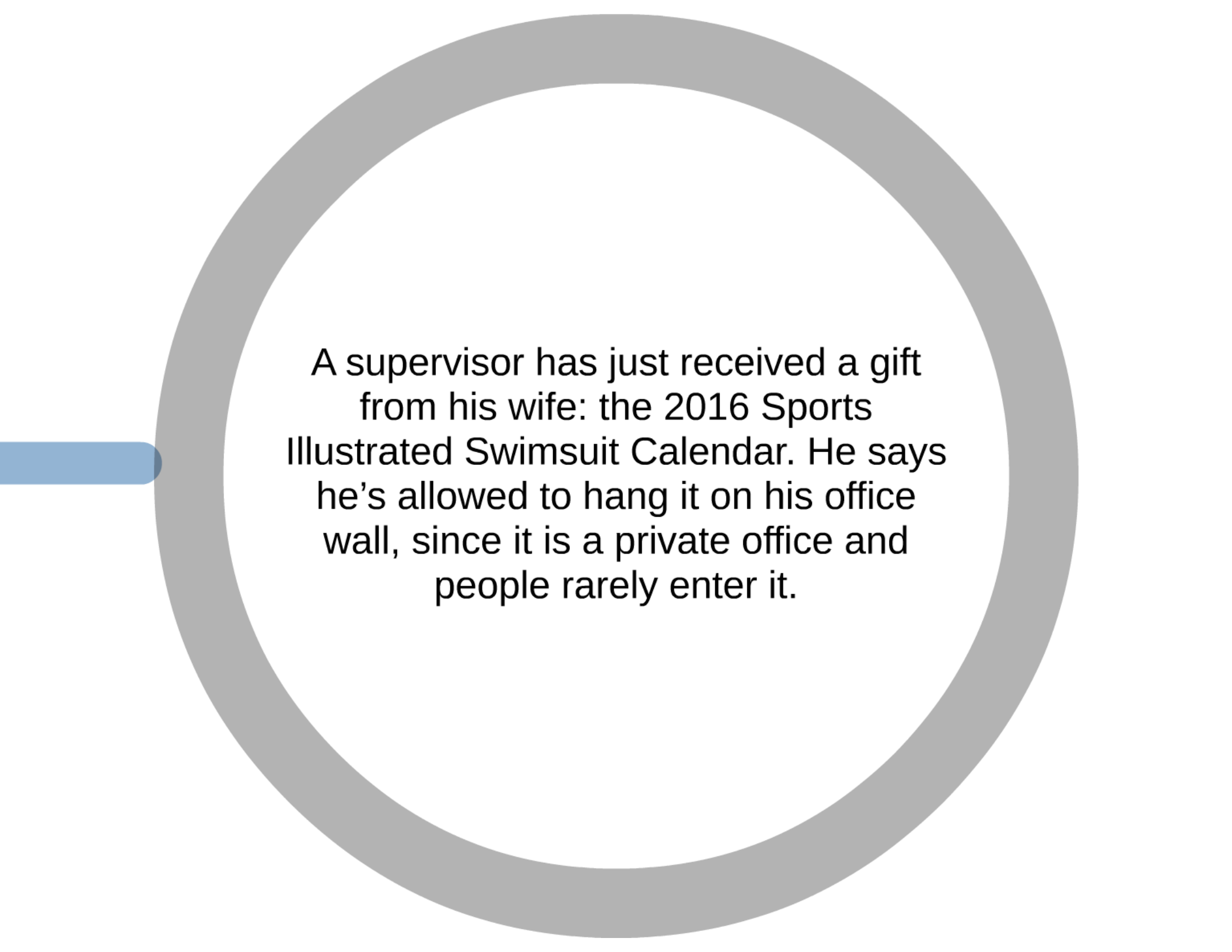


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# Ten Tools To Address Discrimination & Harassment

- Treat Everyone with Respect
- Be Aware
- Treat Like Situations Alike
- Address Situations Immediately
- Consider all Options/Solutions
- Be Fair—Don't Take Sides
- Review the Company's Policy
- Be Discreet—Confidentiality Where Possible
- Ensure No Retaliation
- Follow-up



# The Importance of Collaboration and Respect in the Workplace

INNOVATION  
SUCCESS  
EVALUATION  
DEVELOPMENT  
GROWTH  
SOLUTION  
PROGRESS  
MARKETING

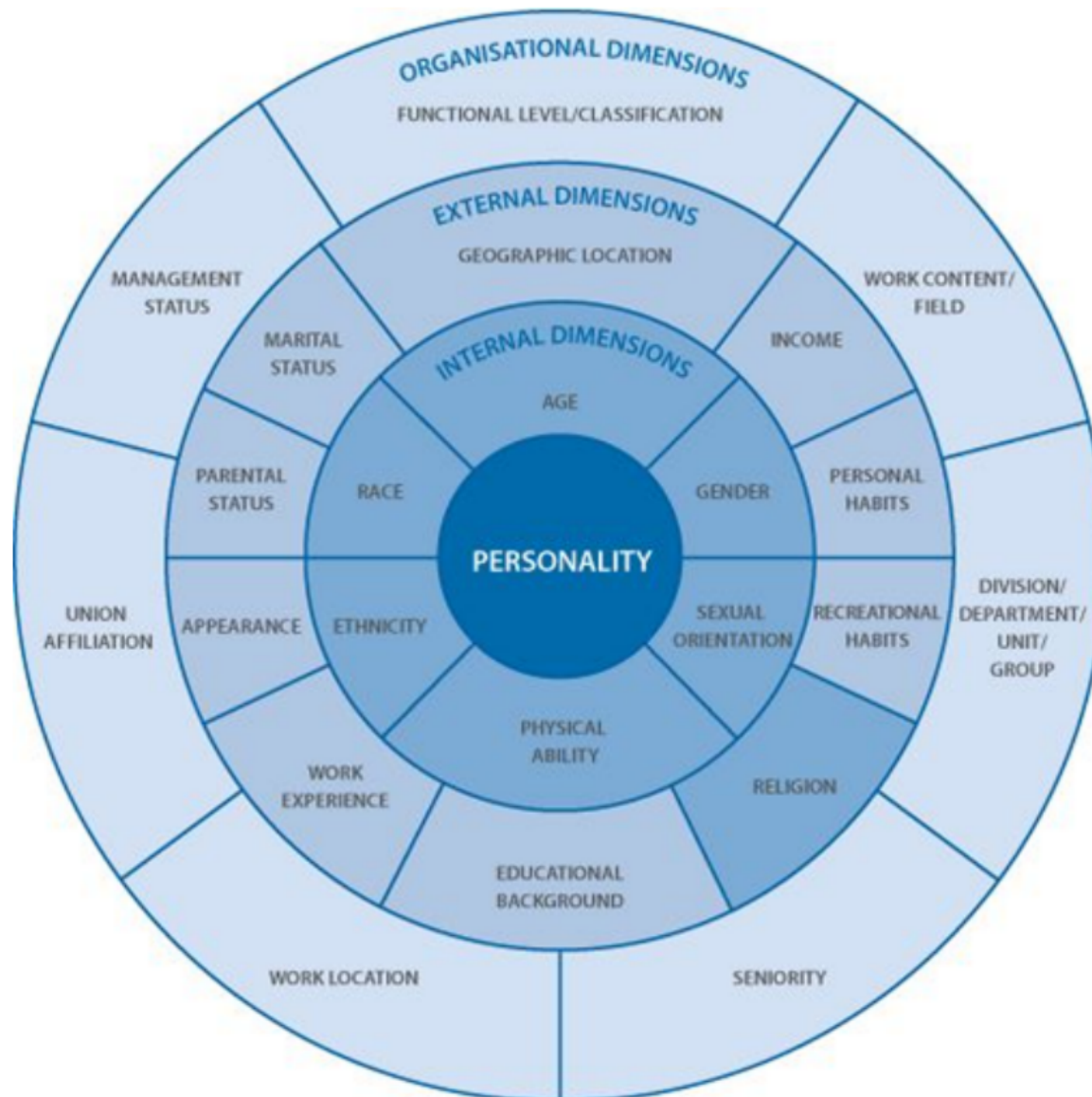


# What is Diversity?

- **Diversity** is the sum total of the knowledge, skills, talents, abilities, and experiences that we bring to the workplace to contribute to the goals and mission of the organization.
- **Managing Diversity** is a conscious choice and commitment by an organization to VALUE these differences by using diversity as a source of strength to achieve organizational goals and objectives.



# Layers of Diversity



# Importance of Valuing Diversity

- Understanding and respecting our differences allows each employee to feel valued.
- Tapping into our differences allows us to understand the diversity of the clientele we serve.
- Creating a welcoming environment for all employees allows us to attract the best people.



# Co-workers Can Make a Difference

- Civility, respect and sensitivity
- Some people's tolerances may be lower than others
- Co-workers can make a big difference
- Casually reminding each other to be more sensitive, or
- Reporting to human resources when they believe that someone might be uncomfortable

# The Power of Apology

- We all have days when we walk away from a conversation feeling a bit regretful of something we might have said inadvertently.
- We have all sent emails that didn't come out quite as we had hoped.
- People often feel that they have been discriminated against or harassed because they feel that they have been disrespected in some way.
- If you feel like you may have inadvertently offended someone, sometimes all it takes is apology to correct the situation.
- A simple apology, if sincere and believed, can be the difference between a stronger employee relationship and a lawsuit.

