

TIPS & BEST PRACTICES
FROM THE EXPERTS

My**HR**Help™

Sexual Harassment Awareness Training

AB 1825 Compliant



Mature Audiences Only

Audiences
Only

Why are we doing this?

- When you get sued, its already too late to make changes
- Hopefully, you can learn from someone else's mistakes

Agenda

- What is sexual harassment legally?
- Recognizing potential harassment
- Practical and legal implications of harassment
- Investigating employee complaints
- Best practices to prevent harassment
- Recognizing and preventing abusive conduct



April 2016
DFEH Regulations



April 2016 DFEH Regulations

Supervisor training must cover:

- employer and supervisor liability
- supervisor's obligation to report
- steps to correct harassing behavior
- review on abusive conduct

Takeaways

Managers
Have An
Affirmative
Duty

There Is
Individual
Liability

Social Media
Is Always
Watching

Allegations
Can Be
Devastating



Walmart



sears



vowed to stop selling Paula Deen kitchen and cookware products.

The sexual harassment claims were settled following dismissal of the race discrimination claim by the Court, but her earning potential has still been estimated to have decreased by millions annually.



Roger Ailes/Gretchen Carlson

Carlson, a former Fox News host, filed a sexual harassment, wrongful discharge suit against Ailes, the co-founder and chairman of Fox on July 6th.

Among the allegations:

- Ailes stated publicly he had slept with three former Miss America winners, but not Carlson;
- Ailes asked Carlson to twirl so he could see her butt;
- Carlson was fired for rejecting Ailes' advances.

Fallout

- Other claims of harassment by Ailes made public
- Fox initiated an internal investigation of Ailes and some witnesses interviewed stated Ailes had sexually harassed them, including Megyn Kelly
- Ultimately, Ailes stepped down as the head of Fox weeks after the lawsuit was filed

Let's Play "Is This Sexual Harassment?"

Vote in Q&A

1



3



2



4



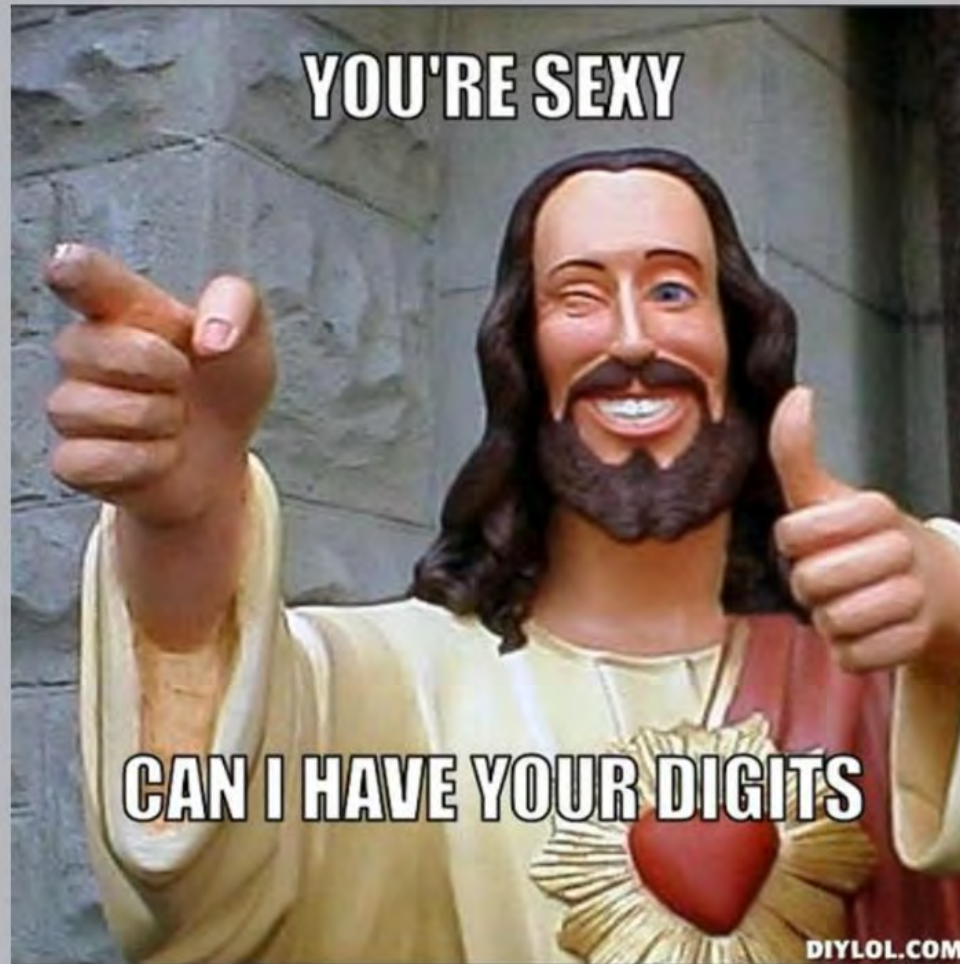
1



2



3



4



What is Sexual Harassment?

Sexual harassment is a
form of
discrimination
just like:

Race /
Color

Religion

Age

Disability

National
Origin

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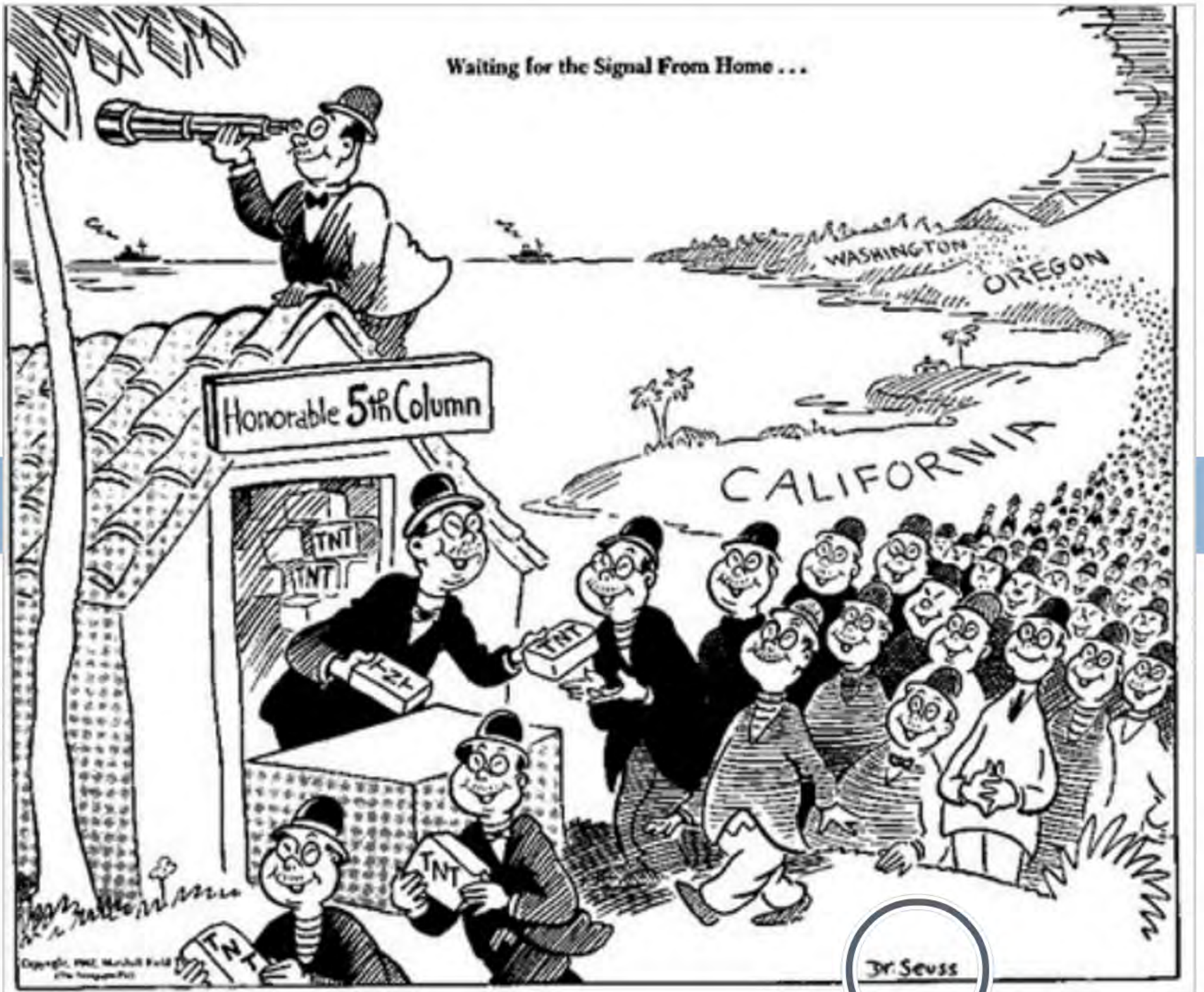
A Long History of Discrimination



Our concept of
what is
offensive is a
moving target



Waiting for the Signal From Home ...



Copyright, 1942, Marshall Field
(The Springfield File)

Dr. Seuss



Dr. Seuss

If your husband ever finds out

you're not "store-testing" for fresher coffee...

*...if he discovers you're
still taking chances
on getting flat, stale coffee
... use be unto you!*

*For today
there's a sure
and certain way
to test for freshness
before you buy*



That target has
changed over time


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What was
previously
acceptable is now
offensive

Characteristics

Race /
Color

Religion

Age

Disability

National
Origin

Sexual
Orientation

Gender

What is the difference between Discrimination and Harassment in the workplace?

Conduct relates to **terms** of
employment:


- Hiring and firing
- Transfers and promotions
- Pay and benefits

Conduct relates to **conditions**
of employment:

- Working environment

Discrimination

Conduct relates to **terms** of
employment:

- Hiring and firing
 - Transfers and promotions
 - Pay and benefits
- 

Harassment

Conduct relates to conditions
of employment:

- Working environment

2 types of
sexual harassment

Quid Pro Quo

A Demand for Sexual Favors



"Why don't you go out with me tonight, and we can discuss that promotion you have been asking about."

Unwanted sexual advances which condition an employment benefit upon an exchange of sexual favors

This stereotypical form is no longer the exclusive type of sexual harassment.



“Why don't you go out with me tonight, and we can discuss that promotion you have been asking about.”

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2 types of sexual harassment

Unwanted sexual advances which condition an employment benefit upon an exchange of sexual favors
This is a form of sexual harassment.

Hostile Work Environment

A work environment that becomes permeated with harassment such that it creates a hostile environment

Test

1. Unwelcome offensive sexual conduct
laptop, smartphone, facebook, twitter, Harasser, Victim, Decision, Sexual Harassment, Based on gender or sex, Verbal, Physical, Visual
2. sufficiently severe or pervasive enough
3. to alter the conditions of employment and
4. create an abusive environment

Hostile Work Environment

A work environment that becomes permeated with harassment such that it creates a hostile environment

Test

1. Unwelcome offensive sexual conduct



Harasser "Animus" or discriminatory intent
Accuser Objective + Subjective

Based on gender or sex

Verbal
opinions, derogatory
comments or slurs

Physical
physical interference with
personal work or movement

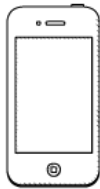
Visual
derogatory gestures,
caricatures, or drawings

2. sufficiently severe or pervasive enough

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Unwelcome



sufficiently so

offensive s

Harasser "Animus" or discriminatory intent

Ba

Accuser Objective + Subjective

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sexual

Based on gender or sex

conduct

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Physical

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Visual

derogatory posters,
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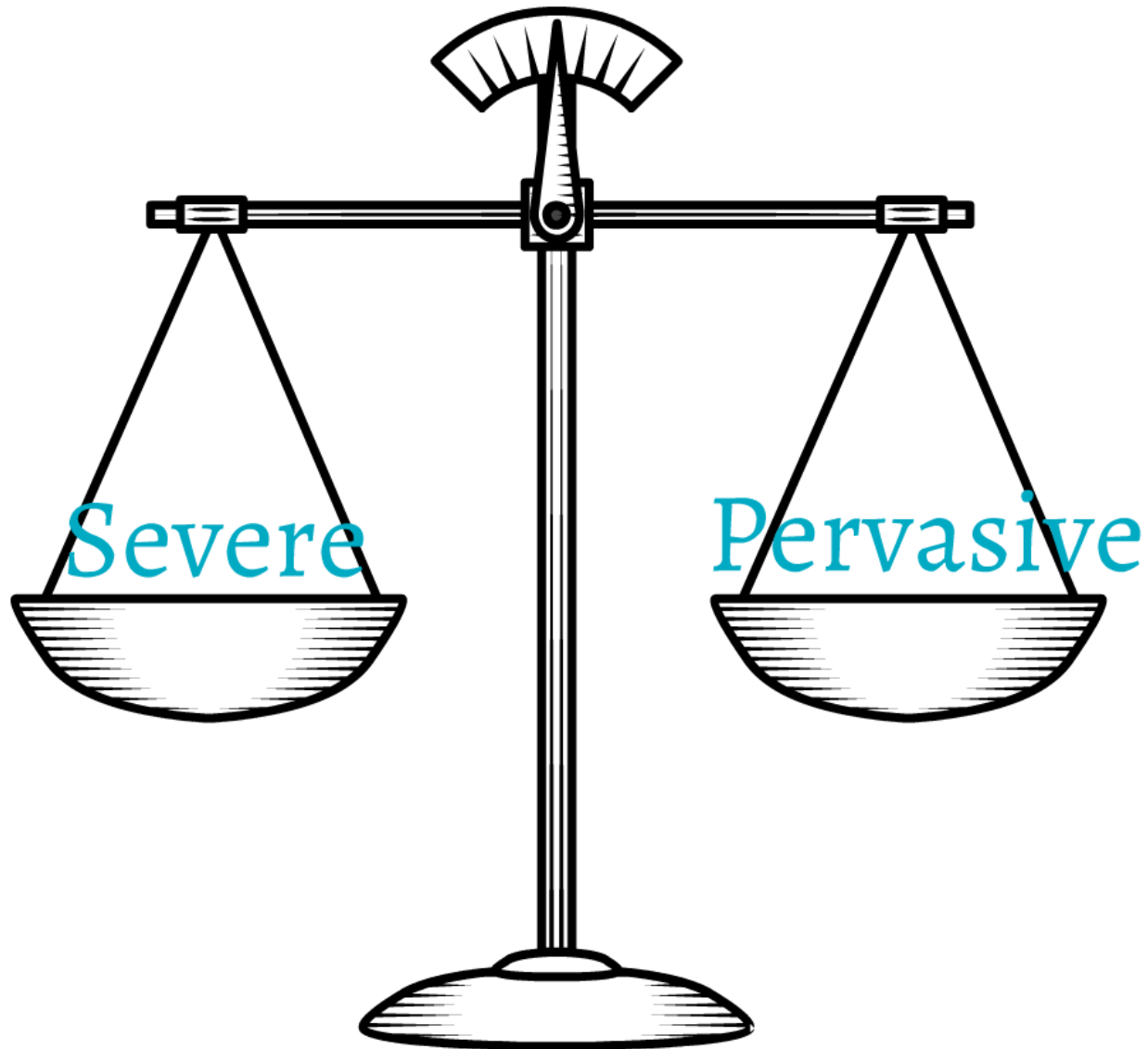
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Totality of the Circumstances



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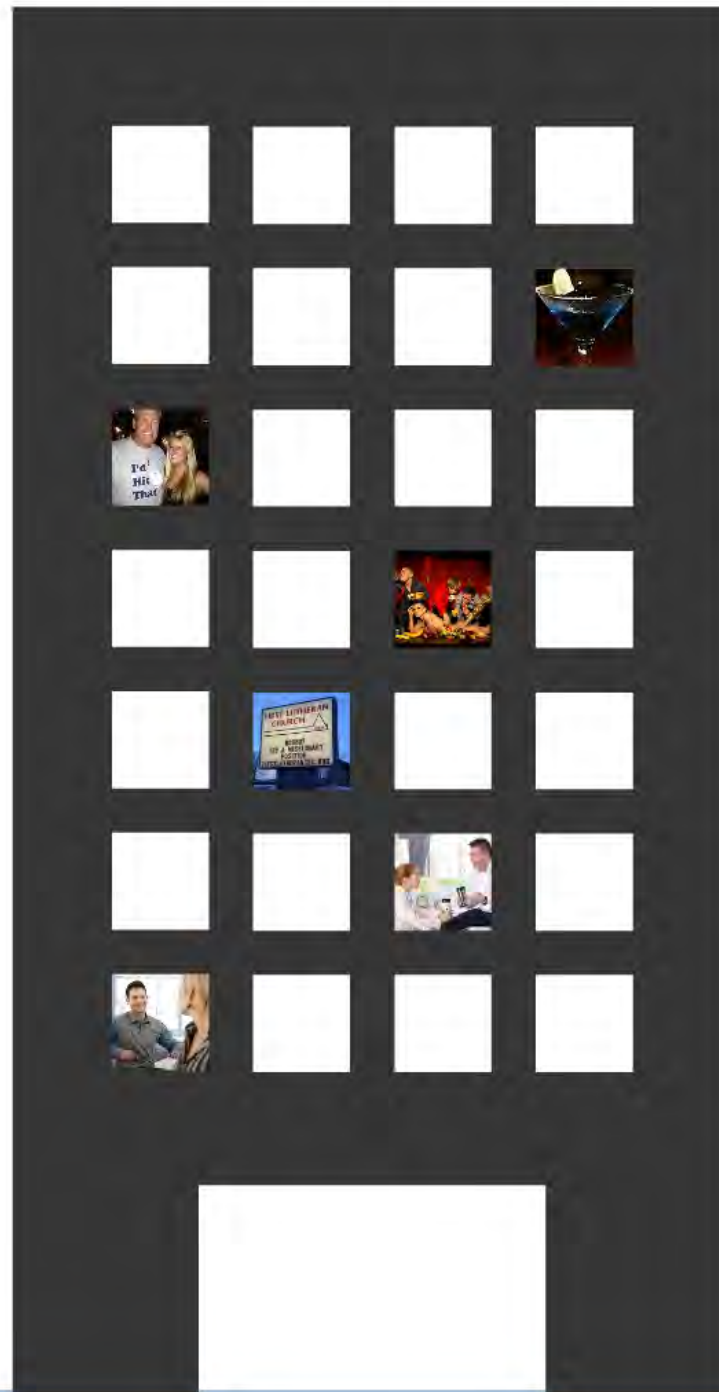
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Is This Harassment?







**FIRST LUTHERAN
CHURCH**



ELCA

**BORED?
TRY A MISSIONARY
POSITION
FIRSTLUTHERANSSC.ORG**







Is This Harassment?



Does it even matter?

Legal v. Practical





Any Questions?

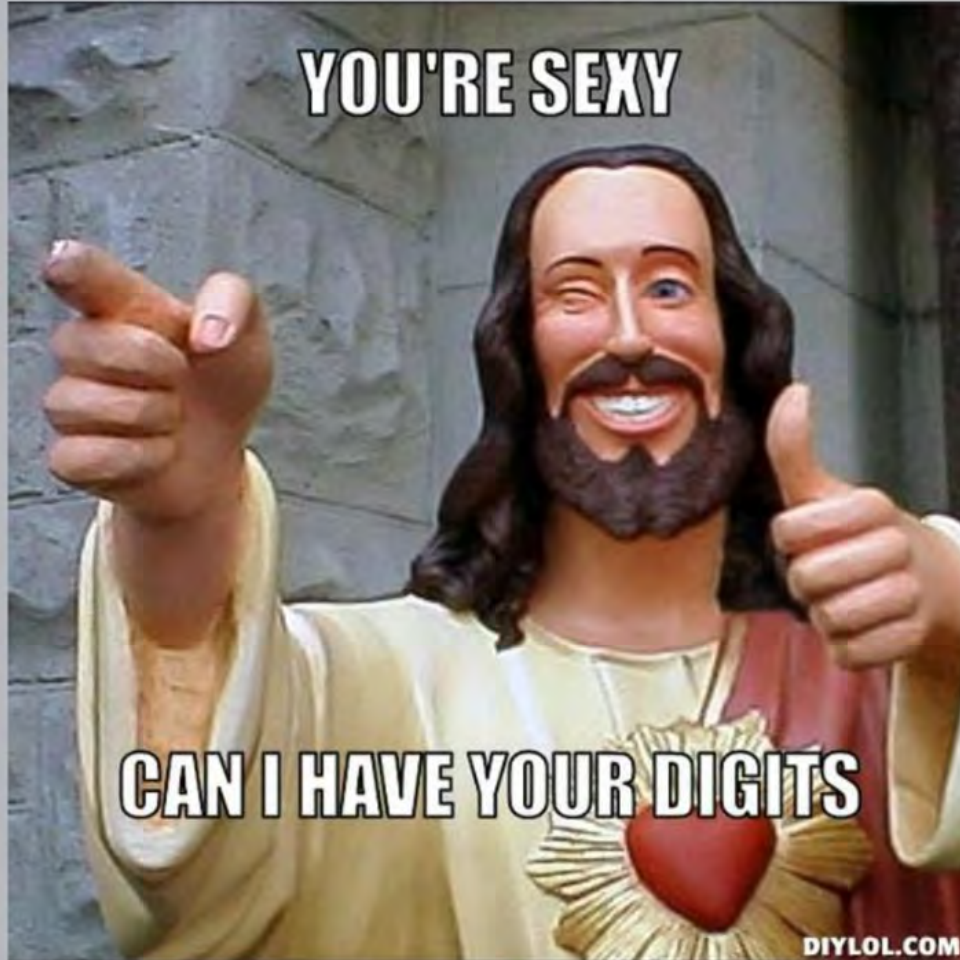
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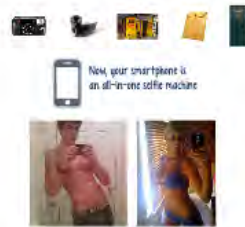


Not only has our harassment gotten subtler ...

... but our ability to harass has gotten better

Sexual Harassment and Social Media

- 190.5 million people in the U.S. currently own a smartphone

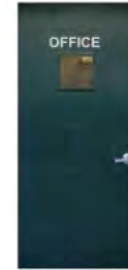


- Smartphone users on average visit Facebook 13.8 times throughout the day

Facebook friends with your co-workers?



People don't stop being co-workers just because it's after-hours



Now, your smartphone is
an all-in-one selfie machine



Hi Jan, are you coming to the meeting at 4?

I'll be there!

Great. Please meet me in my office at 3:30 so we can have a brief cunnilingus beforehand.

Excuse me?

I have no words. I typed conference and my phone changed it. I am so sorry.

Wow



« \$|4W »

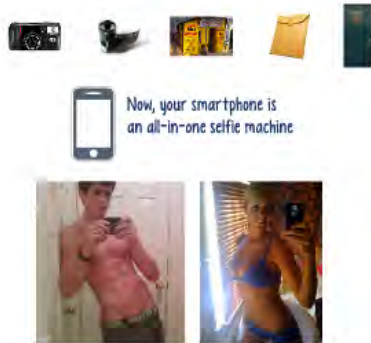


Follow

I just felt this girl up at #akon24 #gropecrew represent! pic.twitter.com/...

Reply Retweet Favorite More





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Facebook friends with your co-workers?



People don't stop being co-workers just because it's after-hours

Smartphone users on a
throughout the day

Facebook friends with your co-workers?



██████████ OMG I HATE MY JOB!! My boss is a total pervy wanker always making me do shit stuff just to piss me off!! WANKER!

Yesterday at 18:03 · [Comment](#) · [Like](#)



██████████ Hi ██████████, i guess you forgot about adding me on here?

Firstly, don't flatter yourself. Secondly, you've worked here 5 months and didn't work out that i'm gay? I know i don't prance around the office like a queen, but it's not exactly a secret. Thirdly, that 'shit stuff' is called your 'job', you know, what i pay you to do. But the fact that you seem able to fuck-up the simplest of tasks might contribute to how you feel about it. And lastly, you also seem to have forgotten that you have 2 weeks left on your 6 month trial period. Don't bother coming in tomorrow. I'll pop your P45 in the post, and you can come in whenever you like to pick up any stuff you've left here. And yes, i'm serious.

Yesterday at 22:53

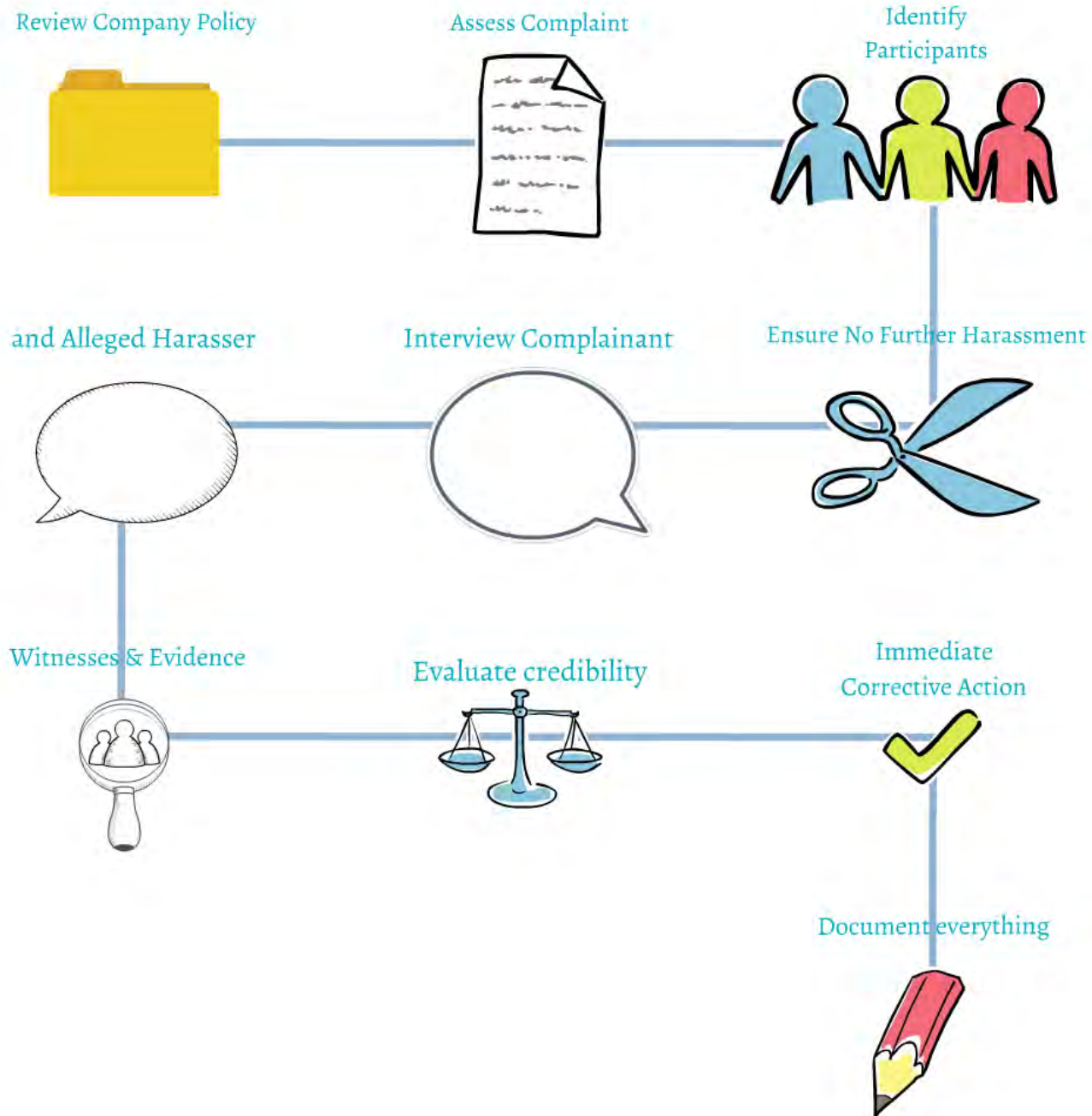
Write a comment...

People don't stop being
co-workers just because
it's after-hours

Obviously there are a lot of different ways sexual harassment can occur

So what am I supposed to do if something happens?

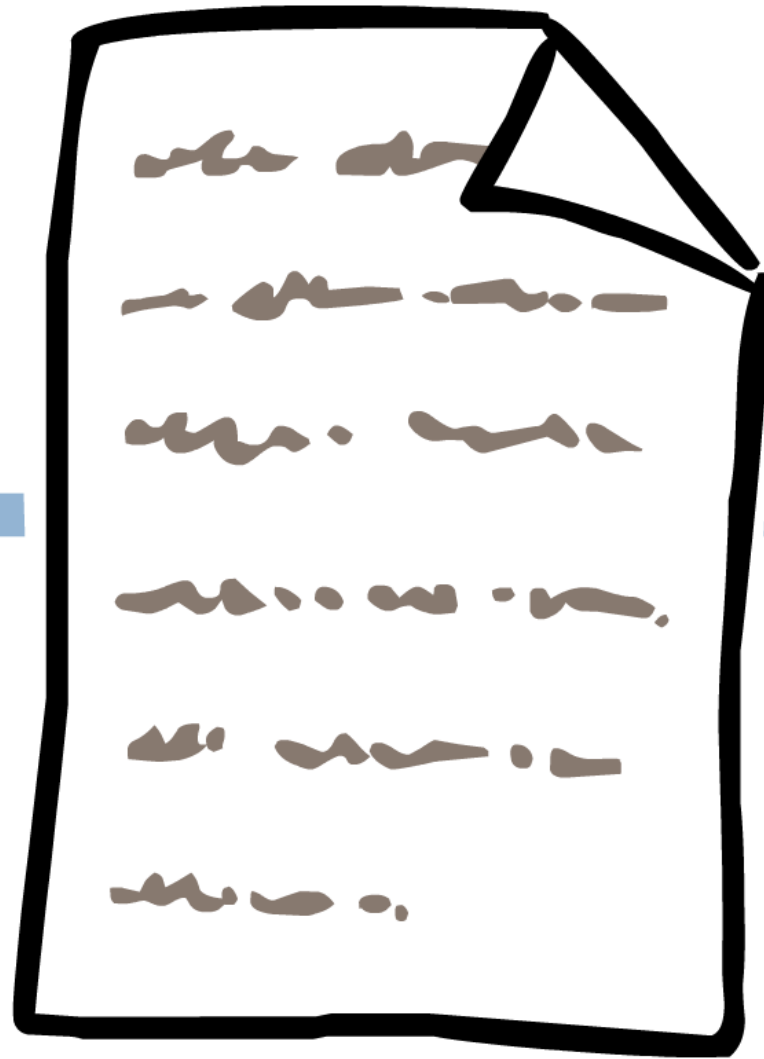
Workplace Investigations



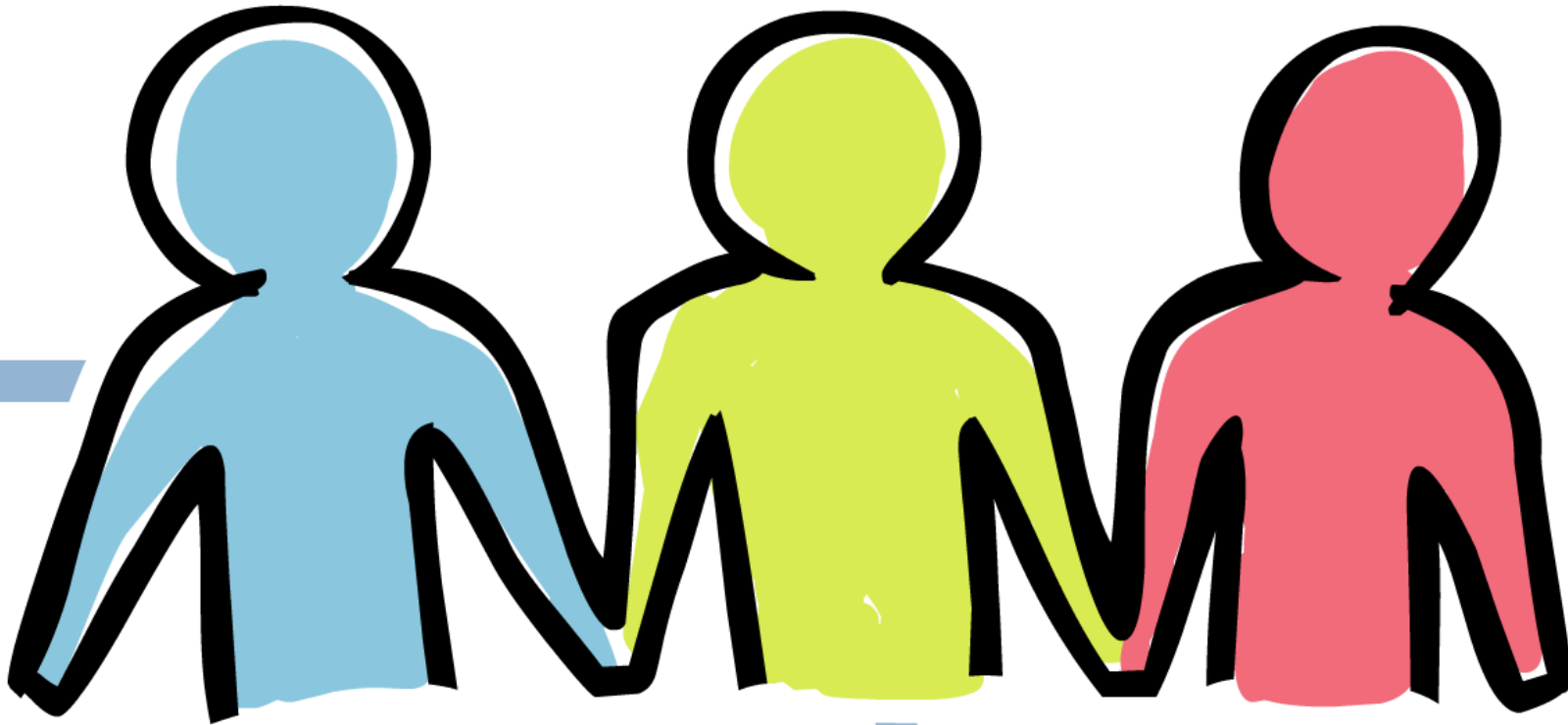
Review Company Policy



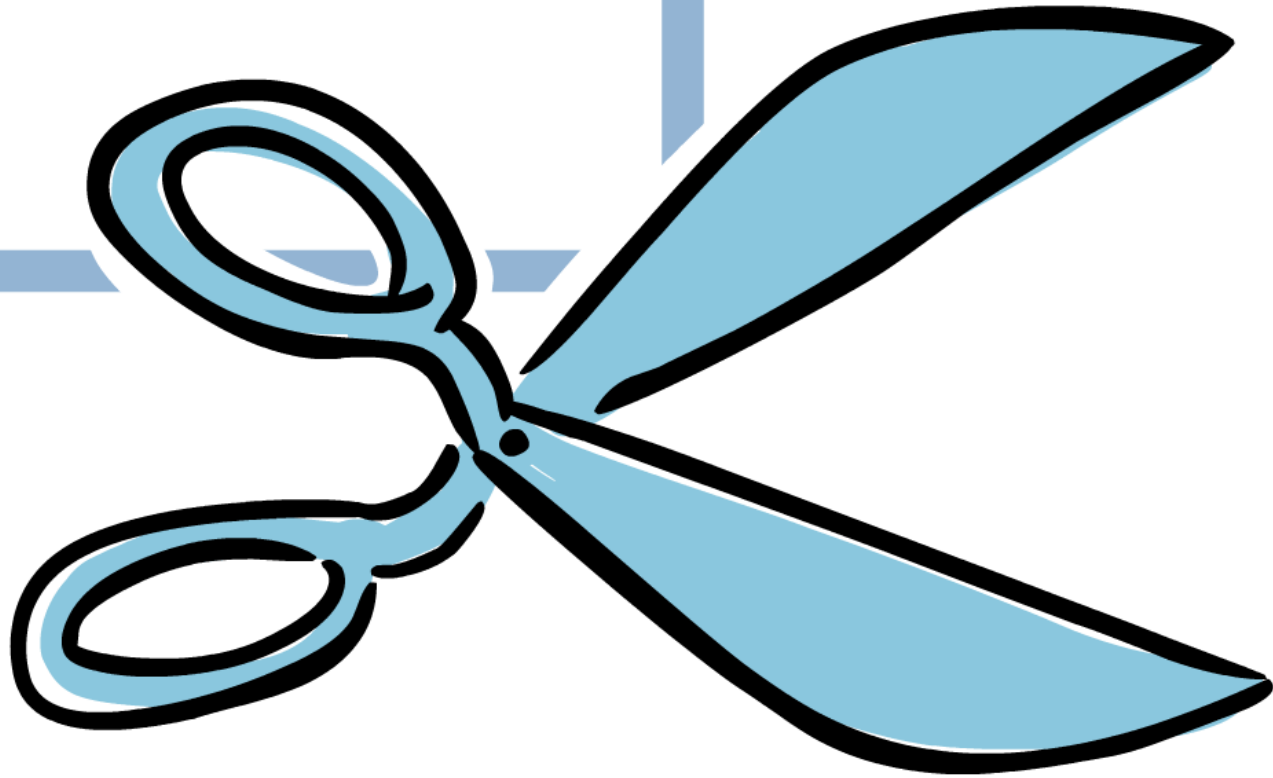
Assess Complaint



Identify Participants



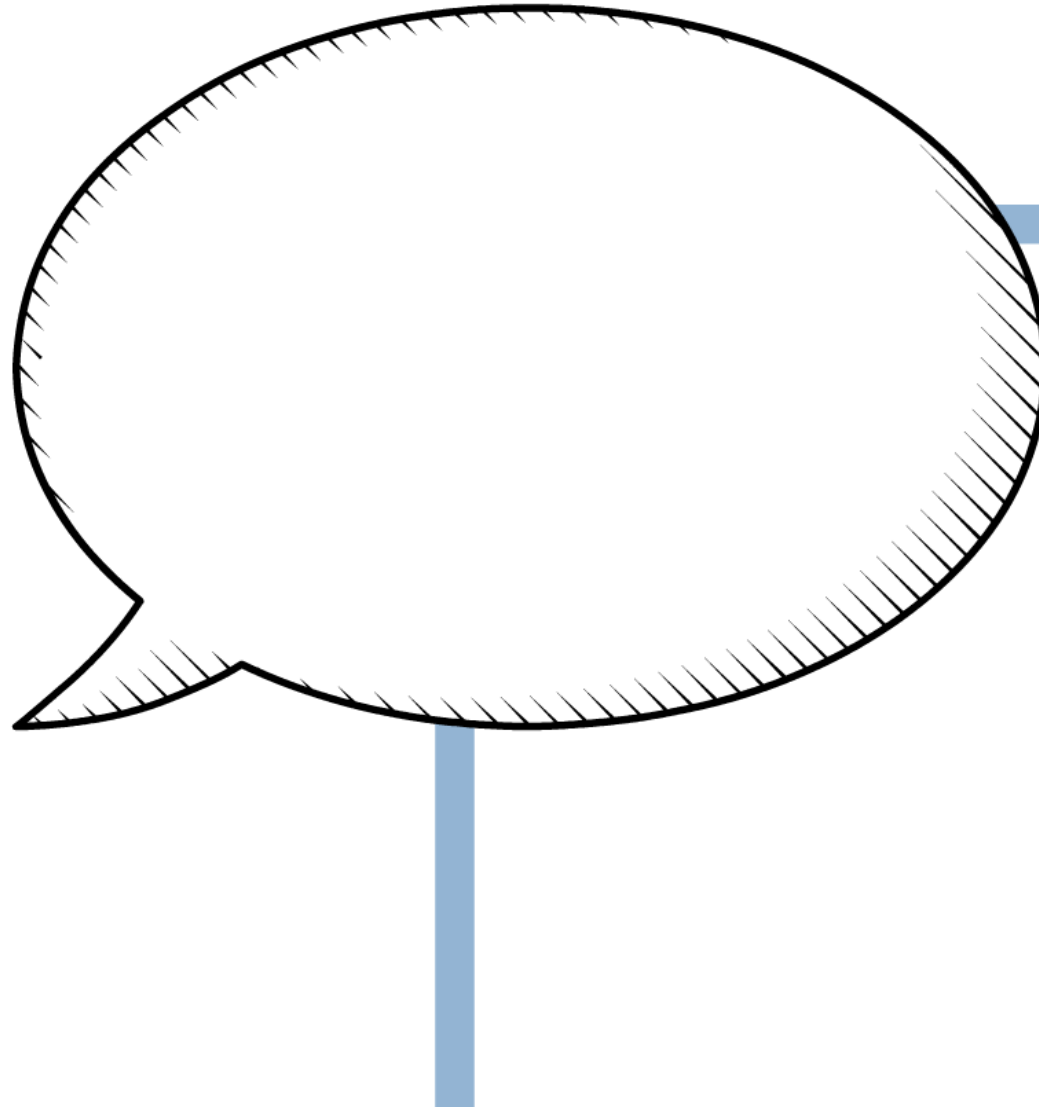
Ensure No Further Harassment



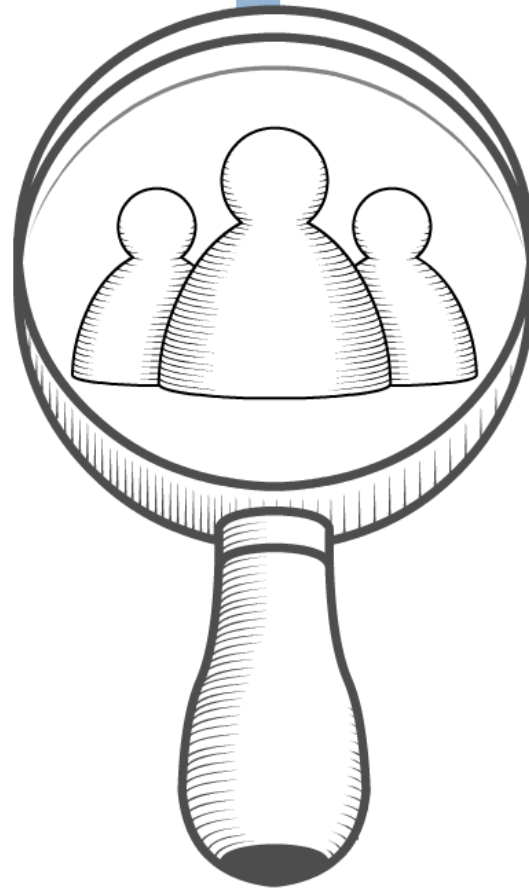
Interview Complainant



and Alleged Harasser



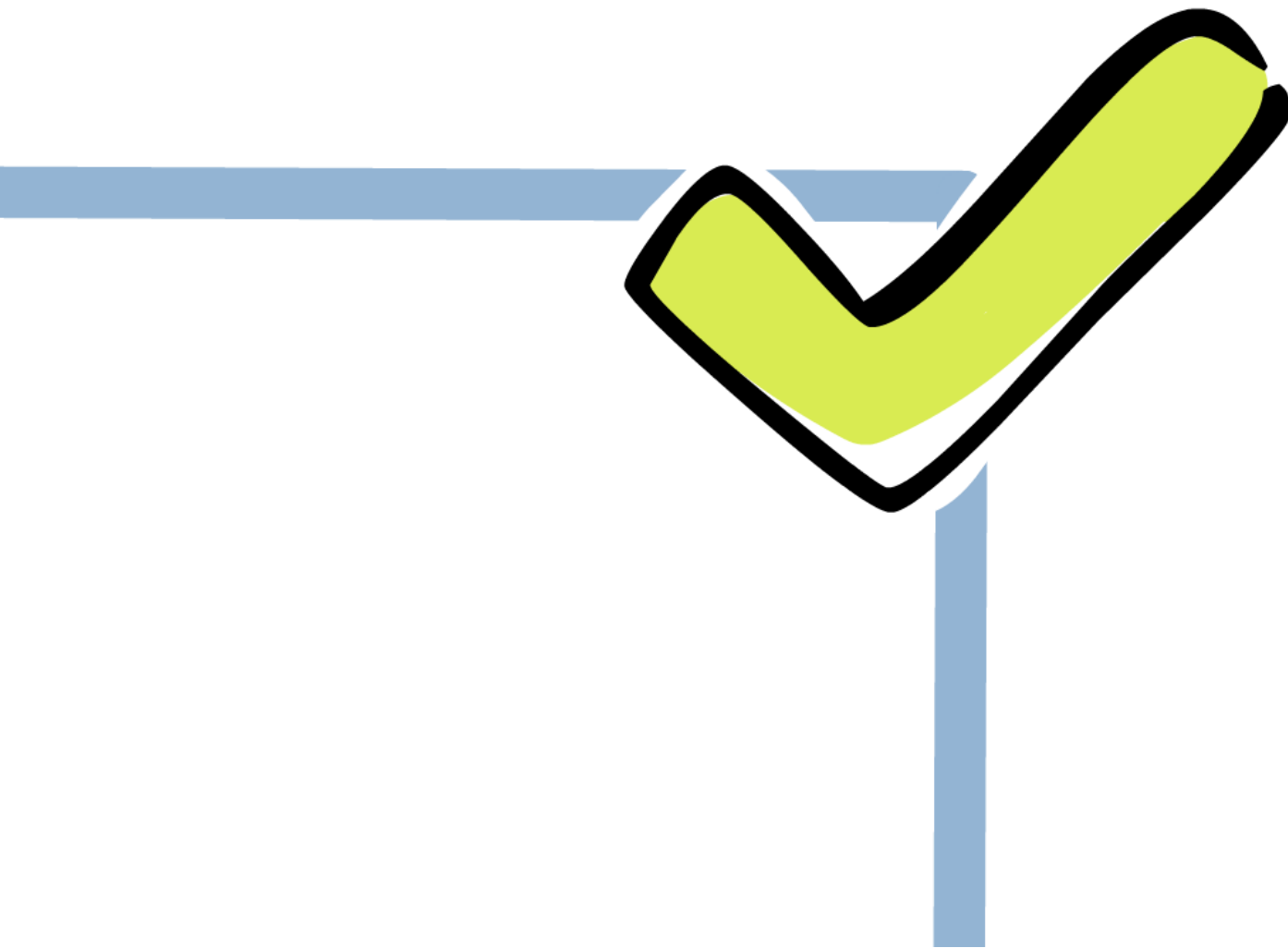
Witnesses & Evidence



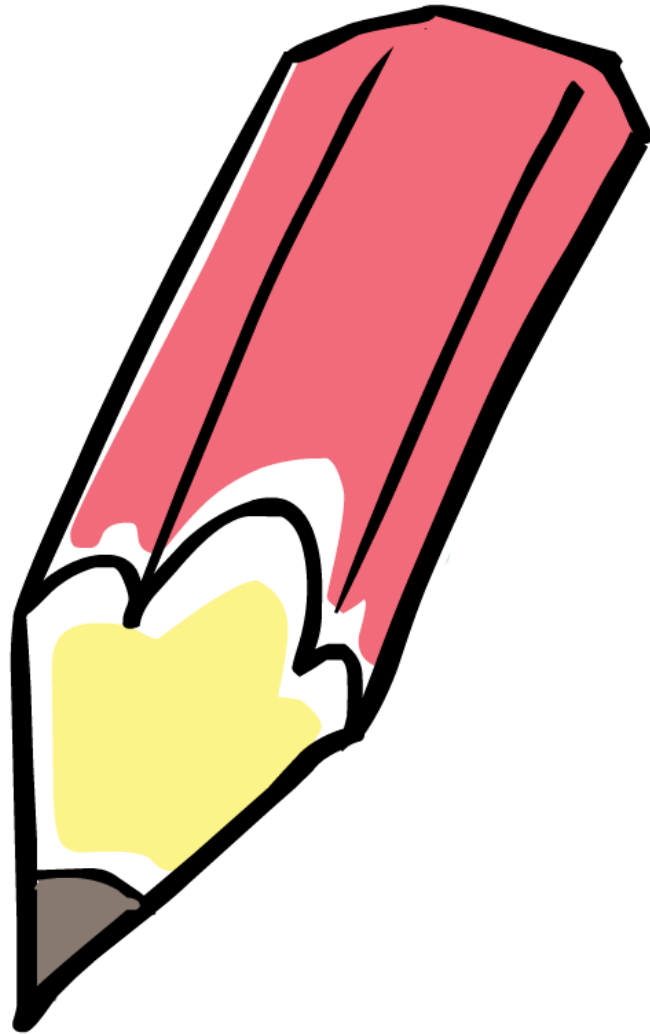
Evaluate credibility



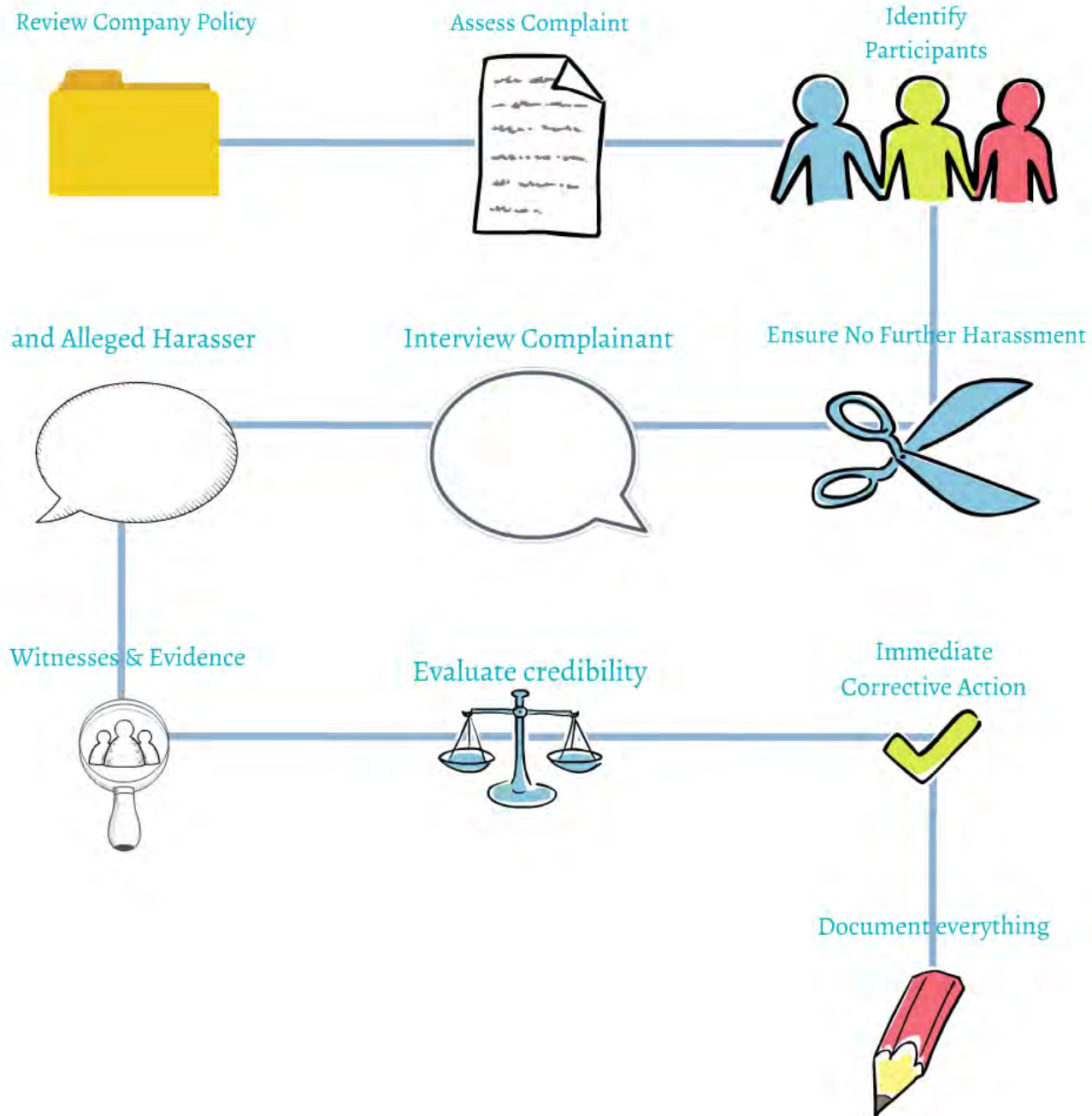
Immediate Corrective Action



Document everything



Workplace Investigations



Best Practices

Peer Pressure

Co-workers can make a big difference

Be Aware

People often don't intend to overtly harass one another, but some people's tolerances may be lower than others

Preempt

Identify subtle forms of conduct and stop them before they become legally actionable

Think Ahead

Ensure reporting and complaint handling procedures are thought-through in advance

Context

Your business is different than anyone else's, so ensure that you and your employees understand the work environment

Prompt Action

Take immediate steps to correct the issue

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Preventing Abusive Conduct

California law now requires managers and supervisors be trained on the prevention of “abusive conduct” a.k.a. workplace bullying

While CA law requires training to prevent abusive conduct, there is **no** employer liability under CA law for abusive conduct (for now)

What is Abusive Conduct?

Hostile, offensive and unrelated to an employer’s legitimate business interests.

May include:

- Repeated verbal abuse, such as the use of derogatory remarks, insults, and epithets,
- Verbal or physical conduct that is threatening, intimidating, or humiliating, or
- Gratuitous sabotage or undermining of a person’s work performance.

What is the difference?

Besides the fact that there is no liability for abusive conduct?

- Remember that harassment is conduct motivated by a “protected characteristic”
- Abusive conduct has **no** relationship to any protected characteristic

Why should I care?

- There is no liability **now**, but in the next 3-5 years, anti-bullying legislation will likely be in place in many states
- 29 states (but not CA) are currently considering the “Healthy Workplace Bill”

- Allow bullied worker to sue bullies
- Would hold employer and supervisor accountable
- Enable Plaintiff to recover lost wages/benefits
- Compel employers to prevent and correct future instances

Preventing Abusive Conduct

- Adopt anti-bullying policies
- Recognize that actions unrelated to a “protected characteristic” can constitute abusive conduct
- Adapt your existing anti-harassment and discrimination procedures

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