chaSEMINARS.com
2514 Stenson Dr | Cedar Park TX 78613 | 512-336-1005 | Fax 512-336-1008 | missy@CHAseminars.com

HUMAN RESOURCES GENERAL OVERVIEW
MODULE II

LESSON 1 ~ RESPECTING EMPLOYEE'S INDIVIDUAL RIGHTS

Host: Welcome to our program, Respecting Employees' Individual Rights. Even though most states are employment-at-will territories, employees do have rights in the workplace that are guaranteed by law. During this program, you'll learn how company policies are essential tools for preventing trouble in the workplace. You'll also learn employees' rights to inspect their personnel files and other laws regarding employees' rights. In addition, you'll learn employers' rights to monitor employees, and as they relate to sexual harassment and discrimination. Watch now as Jason Stern, employment law attorney and consultant, explains the basics of employees' individual rights and your rights as an employer.

Jason: Hello, my name is Jason Stern. It is human nature to desire respect. Unfortunately, we don't always get it. Today, I want to speak to you about respecting an employee's individual rights. Even though most states are employment-at-will territories (meaning, employees can be fired at any time, without cause), nonetheless, employees do have rights in the workplace that are guaranteed by law. Beyond actual employee rights, you would be well advised to make sure to communicate to all of your employees all the company policies that could affect their employment. You can use your company's employee handbook as a reference. Having your employees know your company's policies provides advantages for both employer and employee. Two advantages to employers are: (1) It eliminates disputes over paid days off, vacation policies, sick leave, overtime, things like that; and (2) It provides legal protection in the event of a court challenge or administrative proceeding. Three advantages to employees are: (1) Quick referral and guidance about company policies regarding vacation, sick leave, overtime, etc. (2) Guidance about what to do if they're being treated unfairly or having workplace problems; and (3) Knowing the written rules and procedures that reduce employee anxiety about sexual harassment, discrimination and other workplace issues. As a manager, you have a responsibility to ensure all your employees have a copy of your company's employee handbook, and that they are aware of the policies described within that handbook. In this next segment, we'll talk about an employee's access to personnel files. As an employer, you have to remain compliant with state laws. Most states have laws giving employees or former employees access to their personnel files; however, this right is limited. Employees usually do not have access to sensitive documents like criminal investigations or reference letters. Employees may have the right to insert rebuttals of information if they disagree with the contents of the information on file. The amount of access to one's file varies from state to state. Some states do not provide for any access to one's file. Government employees may have rights under their state's Freedom of Information Act laws, if applicable. Know the laws within your state and contact your human resource department for more information, or if you have any questions. Just as an FYI, there are no federal laws giving employees the right to inspect or amend their personnel file. Now, let's see what you would do in this situation. How about monitoring your employees' activities? Regardless of whether your company policies are intrusive or respectful of employee privacy, you would be well advised to effectively communicate your company's policies concerning employee privacy. Here are some topics you would want to consider: First, e-mail. Is e-mail private? Not usually. E-mail systems that are owned or maintained by the company, can legally be monitored by that company. This includes e-mail both received by and sent from employees. E-mail maintained on a non-company owned server, for example AOL, is not legally viewable by an employer, unless an employee leaves his workstation unattended while connected to the outside server. Why would a company read its employee's e-mail? Well, although it seems to violate employee privacy, albeit not the law, employers could reasonably be justified in monitoring e-mail to prevent or stifle sexual harassment or hostile work environment claims due to lewd or inappropriate e-mails. At other times, companies might do so if employee productivity was down. Second is voice mail. Voice mail is subject to the same laws as e-mail. Therefore, voice mail maintained on a company system is the employer's property. Next up is computer or Internet monitoring. Employers may legally use computer software that enables them to

see what is on the employees' screen or stored on the hard drives of employee workstations. Employees may be subject to keystroke monitoring, ensuring a minimal level of keyboard activity for certain types of jobs. Companies may also keep track of the amount of time an employee spends away from his computer. Some employers may monitor or restrict access to Web sites to prevent or discourage employees from visiting pornographic or other workplace inappropriate Web sites, such as gambling or MP3 sites. You have a responsibility, as a manager, to make employees aware of computer and Internet policies in advance, to prevent misconduct. Employees in violation of an acknowledged and reasonable company policy, may be given verbal or written warnings, placed on probation, demoted or even terminated. Employers need to treat all employees equally by having standard published procedures for dealing with violations, and they should treat all violators equally. Unequal treatment could subject a company to lawsuits, such as treating a woman differently than a man for the same or similar misconduct. Let's talk about telephone monitoring. Can employers listen in on telephone conversations? There's federal and state laws that deal with this type of activity. Federal law cites the Electronic Communication Privacy Act, also known as the ECPA, which governs interstate, state-to-state telephone calls. The ECPA allows unannounced monitoring for business-related calls. However, when an eavesdropping employer realizes a call is personal, it's required to immediately stop monitoring that call. State law is a bit different since it varies from one state to another. In general, telephone numbers dialed from telephone extensions may be recorded by a device known as a pen register, that allows employers to see a list of telephone numbers dialed from the employee's extension and the length of each call. You should communicate to your employees any rules restricting use of work telephones to make personal calls during work hours, and of any company policy on this issue. Now, let's take a look at another vignette, then answer the question that follows. Now, let's take a look at sexual harassment and discrimination. Employees have a legal right to be free from sexual harassment in the workplace, and it is every manager's responsibility to promote and ensure a work environment of respect. The United States Supreme Court has ruled that illegal sexual harassment occurs when unwelcome sexual advances, requests for sexual favors and other conduct of a sexual nature creates a hostile or abusive work environment. Here are some specific examples of what not to do: Making unwelcome advances or demanding sexual favors in return for job benefits, promotion or continued employment; telling sex-related or gender-demeaning jokes; posting sexually explicit photos that offend employees; commenting inappropriately on an employee's appearance; requiring employees to dress in scanty attire; repeatedly requesting dates; having strippers perform at company gatherings; or stating that people of one gender are inferior or cannot perform their duties as capably as people of another gender. Sexual harassment can include man to woman, woman to man or same-sex gender harassment. This is just a short list of what to avoid. Sexual harassment is not limited to these examples. See the Playback Media program, Preventing Sexual Harassment, for more information. Our next topic is discrimination. Employees have the right to be free from any form of discrimination, be it age, race, religion, citizenship, national origin, military status or gender-based. Most states have laws that protect employees from discrimination based on sexual orientation. Title VII of Federal Law, protecting employees from illegal discrimination, applies to businesses with 15 or more employees, while most state laws protect employees of smaller companies. Title VII discrimination claims are investigated and enforced by the Equal Employment Opportunity Commission, also known as the EEOC. Employers may not retaliate against employees for opposing illegal discrimination, or for filing a complaint or for cooperating in an investigation of a complaint. Retaliation is defined as the firing, disciplining, demoting or refusal to promote an employee based on employee actions. As a manager, there are some other employee rights issues in the workplace that you should be aware of. Employees have no legal right to a review. However, an effective manager will conduct reviews according to company procedures. Employees who are terminated for reasons other than misconduct may be eligible for unemployment benefits. However, employees who quit or are fired for misconduct are usually ineligible for unemployment benefits. Unless the person is part of an employment contract or union agreement, employees have no legal rights to receive severance pay in the event of a layoff. Finally, the Family Medical Leave Act requires employers to give employees up to 12 weeks of unpaid leave for family or medical reasons, and to ensure that the employee will be reinstated to the same or a

similar position upon their return, with certain exceptions. I hope this information will assist you with respecting an employee's individual rights, and knowing your rights as well.
Host: As a manager, you need to be aware of your rights as an employer, as well as your employees' individual rights. Make sure all your employees have a copy of your company's employee handbook and are aware of the policies described within that handbook. For additional resources on Respecting Employees' Individual Rights, be sure to access Reference Materials.

LESSON 2 ~ DISCRIMINATION, PART I

Host: Welcome to Discrimination. Today, a variety of federal and/or state laws make it illegal for employers to discriminate on the basis of age, race, citizenship, gender and more. Now during this program, you'll learn how to spot discrimination and the proper guidelines to avoid it. You'll also learn the guidelines on how to prevent unintentional discrimination when hiring, promoting and terminating employees. Join us now as employment law attorney Jonathan Levy and the host of a popular news show inform audiences on discrimination laws and prevention guidelines.
Lynn: Hello, and welcome to "Insights." On this edition we'll take a look at avoiding discrimination in the workplace. And with me today is an expert on the subject, employment attorney Jonathan Levy. Welcome, Jonathan.
Jonathan: Thanks, Lynn.
Lynn: Since the civil rights movement in the 1960s, we as a society have made tremendous strides in creating equal opportunity in the workplace. But the job isn't done, is it?
Jonathan: Laws alone don't make change; people make change. Most managers want to do the right thing and are aware of the most obvious forms of discrimination, although many are blindsided by accusations of discrimination. They're just unaware that some of the things they do and say can later be connected to their job decisions to show illegal discrimination.
Lynn: What is illegal discrimination?
Jonathan: Simply put, illegal discrimination is making an adverse job action based on a protected characteristic. An adverse job action might be interviewing and hiring, setting pay rates, granting leaves, training, evaluating performance, supervising, disciplining, assigning jobs, promoting, demoting, laying off or terminating.
Lynn: You said protected characteristic?
Jonathan: Yes, there are ten characteristics protected under federal law and others protected by some states and cities. The federally protected characteristics are sex and gender, age 40 and over, race and color, religion, national origin/ancestry, citizenship, veteran and/or military status, pregnancy, family and medical leave and disability.
Lynn: Let's talk more about those in a second. How is illegal discrimination proven?
Jonathan: Well, while it's helpful to think of discrimination as intentional or unintentional, it's important to understand that both can lead to a charge of illegal discrimination. A manager doesn't have to intend to discriminate in order for a court to conclude that illegal discrimination occurred.
Lynn: It's important to understand the details of protected characteristics. Talk about gender.
Jonathan: Well, it protects women and men. Employees must receive equal pay for equal work if they have equal knowledge, skill, ability, education and experience.
Lynn: Let's take a look at a fact-based scenario.
Denny: Things are really cooking. You know we've got that Haberly account and I'm finishing up the promotions.
Kevin: That's actually what I wanted to talk with you about.
Denny: Oh, really? Problems?
Kevin: I see you decided to promote Tom and Steve and you opted not to go with Erica.
Denny: Well, when you look at the situation, the decision ended up being not even close.
Kevin: So, why Tom and Steve?
Denny: Tom's a real leader; the guy's a go-getter. He's got the attitude of a good quarterback, cool under pressure but not afraid to give orders.
Kevin: And Steve?

Denny: Pretty much the same thing.
Kevin: What were your thoughts on Erica?
Denny: Between you and me, that girl just grates on me.
Kevin: Denny, you have to give me specifics when promoting. These are just generalities.
Denny: I'm confused. This stuff is true, though.
Kevin: You mentioned Tom is cool under pressure.
Denny: Like a QB.
Kevin: Two weeks ago he exploded in a staff meeting. He threw the Callahan file in the air and stormed out of the room.
Denny: Oh, that's right. How'd you know about that?
Kevin: Those things get around. Even in his file it talks about his anger management problem. Look at Steve's.
Denny: I know, but we need a creative type over there.
Kevin: Den. He headed that Laramie project. It says here it was terrible. "Lacks a sense of design and vision." In fact, we lost that account. Now, look at Erica's reviews. "Good creativity." "A sense of creativity." "Creative design." Denny, that's three times it mentions creativity.
Denny: I think I'm just going with my instincts as a manager, though, my gut feel.
Kevin: One minute you're saying Tom's a real leader and gives orders, but Erica does the same thing and you call her overbearing. You can't use different words for men and women to describe the same behavior. It's not fair. You have to think to yourself, "What are the competencies I'm evaluating people on?" and "Am I treating men and women equally and fairly?" Make sure your gut feelings are supported by the facts, like performance reviews and other documents. Besides, how would all this look in a court of law?
Denny: Court? Come on, Kevin, that's reaching a bit. Some of us would call that a bit paranoid.
Kevin: I call it good business to treat men and women equally.
Jonathan: Denny never intended to discriminate but, nonetheless, it is gender discrimination.
Lynn: Now, Jonathan, federal law also prohibits discrimination against people who are 40 years or older.
Jonathan: Pretty straightforward. You can't discriminate against someone if they are 40 years or older. All the regular discriminatory job actions that I mentioned earlier are illegal if based on age. Even people under 40 may also be protected by a state law or a company policy. Otherwise, people under 40 are not protected.
Lynn: Do you have any tips for avoiding age discrimination?
Jonathan: Sure, avoid teasing - like "Are you getting Alzheimer's?" Don't use nicknames like old man, old gal, geezer, anything that could be construed as age-related.
Lynn: How about race and color?
Jonathan: All races are protected, Lynn. It can't be more clear. It's illegal to make any employment-related decisions - hiring, firing, promotions and the like - based on race or color.
Lynn: It seems, though, some situations can be tricky. For instance, you may be required to obtain information about an applicant's race for a purpose of applicant flow and/or affirmative action obligations.
Jonathan: Well, if that's your case and your company has applicants self-identify their race, you should tear off and separate the information from the application. The information about race, of course, can't be used in the selection process.
Lynn: Talk to us about religion.
Jonathan: A company is required to provide reasonable accommodation for an employee's sincerely held religious observances or practices unless the accommodation would create what's called an undue hardship.
Lynn: What would be a reasonable accommodation?
Jonathan: Rearranging schedules or even giving time off for religious observances.
Lynn: What about religious dress, like yarmulkes or turbans?

Jonathan: They're allowed unless they unreasonably interfere with business. As a side note, never deny a request for religious accommodation unless you've checked with human resources first.
Lynn: What about national origin or ancestry?
Jonathan: No one can be denied equal employment opportunity because of their birthplace, ancestry, culture or linguistic characteristics that are common to a specific ethnic group.
Lynn: But a heavy accent is grounds for not hiring in jobs requiring oral communications, right?
Jonathan: Yes, but "speak only English" rules may be discriminatory. But they are allowed if necessary to prevent disruption of a work group or to provide customer service or for other business needs.
Lynn: When it comes to national origin and ancestry discrimination, the case of Mr. Wong offers a sobering lesson. Mr. Wong worked as an accountant. Wong took the promotional exam and was rated second on the certification list. Wong interviewed for the Seattle job. He was not hired. Instead, a Caucasian man named Robertson was hired. Robertson was ranked third on the certification list. At trial, Wong introduced evidence that the hiring manager, Trenton, made several statements. Trenton remarked about Wong to another accountant, "If you want to hear someone unintelligible, you should have heard that guy from Miami. How did he expect to be a supervisor if he can't even speak the language?" During the trial, Trenton gave contradictory testimony about his reasons for selecting Robertson instead of Wong, although he admitted that Wong's accent would in no way interfere with his ability to supervise. Another Seattle accountant also testified that he heard Trenton state, in a demeaning tone, that he could not understand Wong. At the trial, two other accountants in the Seattle office testified that they heard Trenton say that he did not "want any more outsiders" after he was told a Hispanic applicant was waiting to be interviewed. The judgment was in favor of Mr. Wong. Here's an interesting characteristic – citizenship.
Jonathan: Non-citizens who are legally entitled to work in this country can't be discriminated against.
Lynn: And legally entitled means U.S. citizens, permanent residents with a green card, work-authorized aliens...
Jonathan: ...and U.S. nationals. A U.S. citizenship prerequisite can only be required by law, regulation, executive order or certain government contracts.
Lynn: One certainly must be careful when interviewing.
Jonathan: Oh, yes. When it comes to an interview, the question to ask is: "Are you legally entitled to work in this country?" You don't want to ask "Are you a U.S. citizen?" unless it is a job requirement.
Lynn: Another protected characteristic is veteran and/or military status.
Jonathan: Never make an employment-related decision based on someone's membership in any state or federal military service. Membership in the National Guard or Reserves cannot be the basis for refusing to hire.
Lynn: And never deny a request for military leave unless you have first checked it out with your HR or other in-house experts.
Jonathan: Excellent advice.
Lynn: Let's talk about some general guidelines for preventing discrimination.
Jonathan: First, never make assumptions about people. Then, be aware of any biases, prejudice and stereotypes and be sure not to bring them into the workplace. And make sure they don't influence your decisions.
Lynn: Pretty obvious, but I guess you don't want to joke or make any negative comments about people's age or race.
Jonathan: Or any other protected characteristic. Remember, one person's joke is another person's offense. One of the overall guidelines is that you need to be consistent with like cases. Treat people with similar job duties and functions the same unless you have a legitimate business reason for treating them differently.
Lynn: Let's take a look at another scenario about that very subject, consistency. We'll go to the office of Attorney Gerry Sinclair as she consults with her client, Derrick Hanson. Let's watch.
Gerry: So reviewing your case, there are some issues we really need to talk about.
Derrick: Shoot.
Gerry: We just finished the first round of interviews with your coworkers.

Derrick: Good. I'm sure they told you what a load of BS this whole case is. I can't believe Ed is suing us, suing me!
Gerry: Well, Derrick, I don't know. It looks like about two months before you terminated Ed for poor performance, you had a conversation with two employees.
Derrick: What does that have to do with anything?
Gerry: Apparently, you're quoted as saying "Ed's days are numbered. We can't have a bunch of dead wood around here. It's time for some new blood."
Derrick: That's taken out of context. Come on, I was talking about the need for others to come in. I wasn't referring to age. He wasn't let go because of his age.
Gerry: Well, you have to be consistent with people.
Derrick: What does that mean?
Gerry: Treat like cases alike. Consistent treatment in your documentation proves consistent treatment for all employees.
Derrick: But if two managers in the same department have different policies, now, that's illegal, right?
Gerry: Well, no. From a legal perspective, only the decision maker must be consistent in the way he or she treats everyone.
Derrick: Unfortunately, that's the least of my problems. So you're telling me that I have to treat everyone the same?
Gerry: Actually, I didn't say that. It is legal to treat employees differently, even those who appear to be like cases, as long as you have a legitimate business reason for doing so. Legitimate business reasons are employee qualifications, employee performance, employer rules and business needs.
Derrick: But just because I wasn't consistent, that doesn't mean I discriminated against him because of age, does it?
Gerry: Well, if that was all there was, maybe we could have a solid defense. The plaintiff's lawyer also gave this to me. It's from last year. It's a copy of a card, a birthday card you gave to Ed. "Fifty isn't old ... if you're a tree."
Derrick: Come on. Give me a break. That was a joke. I was teasing him. He never had a problem with that. He never said a thing.
Gerry: Even if a joke or a comment is not always sufficient by itself to be illegal harassment, a joke or comment about any other protected characteristic - and that's most jokes - could lead a jury to conclude that a manager had a bias, prejudice or stereotype about a given group. You terminated Ed after 15 years of service.
Derrick: Geez! Look at the guy's performance. I told him, in writing, he had two quarters to improve and he didn't. Now that's a fact, end of story!
Gerry: Well, there we have another problem. The plaintiff sent this over.
Derrick: Great.
Gerry: You manage seven sales reps. Out of the seven, four of those have lower numbers than the year before.
Derrick: That's probably because...
Gerry: Hold on. I'm not finished. Three of them have lower numbers than Ed. Why aren't they being let go?
Derrick: Look at his performance plan. I was hoping he'd improve. This totally shows that I supported him. Check it out. "During the plan period, we expect you to make an average of four sales calls a day. I'm always available to personally help you." And here we go, "We have every confidence that you will successfully complete this plan. Please contact me or ask for assistance if you have any questions or concerns." I didn't want to fire the poor guy.
Gerry: That was my original thought, too. Then I saw this e-mail. You sent this to Margie in HR the week before you gave Ed the plan. "Dear Margie, I've had it with Ed. This guy is beyond my help. I see he no longer has the stamina to compete in this fast-paced business."
Derrick, you've got to beware of electronic documentation. E-mail, computer files and Web visit logs are admissible in court, belong to the company and may be accessed at any time by the employer. You've

got to be careful about drafts you write on the computer, especially those sent in e-mail. They just may exist forever. It's going to look like that plan you put Ed on was a sham.
Derrick: I just wish I knew about some of these things before.
Lynn: Jonathan, in our final segment, I want to discuss avoiding discrimination in hiring, promoting and when terminating. What are some guidelines?
Jonathan: Well, the first thing to do is to write out a job description and include the essential functions of the job. Be sure to identify the technical requirements and the required competencies. Then write out all questions and ask all applicants the same basic questions.
Lynn: Keep it equitable for everyone.
Jonathan: That's right. And ask only proper interview questions. Then hire the most qualified candidate for the position. You have to be able to articulate the reasons why that candidate was the most qualified.
Lynn: What about promoting employees?
Jonathan: Well, just like the situation for hiring, write a job description and identify the technical requirements and the required competencies. Beyond that, you're going to need to be sure to look over the performance reviews and the other performance records for all candidates and determine which candidate has the required competencies.
Lynn: What if it's a close decision?
Jonathan: Well, interview others who've worked with the candidates. They can help you determine the competencies. Remember, if you interview the candidates, focus on legitimate job-related questions and ask all candidates the same basic questions.
Lynn: And keep good notes.
Jonathan: Absolutely, but keep your notes limited to objective, verifiable facts. Overall, just keep in mind that, if challenged as discriminatory, you may be forced to show that the candidates you promoted were better qualified than those suing for discrimination.
Lynn: Talk about terminating employees.
Jonathan: First of all, you'll need to review like cases.
Lynn: In other words, how have similarly situated employees been treated for similar behavior?
Jonathan: Exactly. If you're terminating someone for - well, for example, excessive tardiness, how are others who are tardy being treated? You must document all like cases before terminating an employee for something that's objective and verifiable, like tardiness. If you haven't documented them, you have no way to defend your decision.
Lynn: Document.
Jonathan: Document. Also, ask yourself: "What's the standard or policy that's been violated?" For performance standards, most employers provide employees with an opportunity to improve their performance. Did you provide that opportunity? And was it commensurate with the opportunity to improve afforded other employees with similar performance issues? The point is you must be consistent. For cases of misconduct, how were employees who did similar things treated?
Lynn: Sounds like the point, again, is be consistent.
Jonathan: You've got it, Lynn. And never fire someone on the spot or when you're angry. If circumstances warrant, you can always suspend an employee pending an investigation. And especially for misconduct, always hear the employee's side of the story. What's their explanation? Does their explanation change the action that should be taken?
Lynn: Sounds like you should act logically and reasonably.
Jonathan: That's exactly right. And be sure to check any documentation to be sure that it supports your reason or reasons for the termination. And, of course, always check with your HR or other in-house experts before terminating an employee. Make sure you follow all the employer procedures for terminations. Failure to follow an employer procedure could itself be evidence of wrongful termination or discrimination.
Lynn: Excellent advice. Employment attorney Jonathan Levy, thanks for being here.
Jonathan: Thank you.

Host: Welcome back. It is beneficial for employers to supply the proper management training to prevent discrimination. Otherwise, managers and employers may have to pay the consequences of lawsuits. For additional resources on discrimination, be sure to access Reference Materials.

LESSON 3 ~ DISCRIMINATION, PART II

Host: Welcome to our program, Discrimination. Today, a variety of federal and state laws make it illegal for employers to discriminate on the basis of age, race, citizenship, gender and more. During this program, you'll learn what is illegal discrimination and how to avoid it. In addition, you'll learn what managers need to know about specific protected groups and the guidelines on how to prevent unintentional discrimination when hiring, promoting and terminating employees. Watch now as Paul Gutierrez, employment law attorney, explains the definition of discrimination and specific strategies on how to avoid illegal discrimination.

Paul: Hi, I'm Paul Gutierrez and today we're going to be talking about discrimination. The word "discrimination" is often used to mean illegal discriminatory acts. Discrimination simply means noticing the differences between things or people that are otherwise alike, and making decisions based on those differences. Not all kinds of different treatment are illegal or even unfair. However, some types of discrimination in employment have been made illegal. Discrimination is treating one person differently than another because of a particular characteristic. Illegal discrimination is unfavorable treatment of a person by category, class or group rather than objective treatment on the basis of merit. Now there are specific characteristics protected by federal law. These include: One, sex and gender. Two, age 40 or over. Three, race and color. Four, national origin. Five, Religion. Six, citizenship and seven, veteran or military status. Some states have their own anti-discrimination laws that should be followed. Marital status, pregnancy and sexual orientation are some examples of characteristics that are protected under state laws. The federal laws that prohibit employment discrimination include Title VII of the Civil Rights Act of 1964 which prohibits employment discrimination based on race, color, religion, sex or national origin. The Equal Pay Act of 1963, the EPA, which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination. The Age Discrimination in Employment Act of 1967, the ADEA, which protects individuals who are 40 years of age or older. The Americans with Disabilities Act of 1990, the ADA, which prohibits employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments. The Civil Rights Act of 1991, which among other things provides monetary damages in cases of intentional employment discrimination. The U.S. Equal Employment Opportunity Commission, the EEOC, enforces all of these laws. The EEOC also provides oversight and coordination of all federal equal employment opportunity regulations, practices and policies. It is illegal to discriminate in any aspect of employment, including: hiring and firing; compensation; assignment or classification of employees; transfer, promotion, layoff or recall; job advertisements; recruitment; testing; use of company facilities; training and apprenticeship programs; fringe benefits; pay, retirement plans and disability. Discriminatory practices under these laws also include harassment on the basis of race, color, religion, sex, national origin, disability or age. Retaliation against an individual for filing a charge of discrimination, participating in an investigation or opposing discriminatory practices. Employment decisions based on stereotypes or assumptions about the abilities, traits or performance of individuals of a certain sex, race, age, religion or ethnic group, or individuals with disabilities. And denying employment opportunities to a person because of marriage to, or association with an individual of a particular race, religion, national origin or an individual with a disability. Title VII also prohibits discrimination because of participation in schools or places of worship associated with a particular racial, ethnic or religious group. Discrimination can be intentional or unintentional. A manager does not have to "intend" to discriminate in order for a court to conclude that illegal discrimination occurred. Intentional discrimination occurs if a manager consciously makes an employment decision based on an illegal criterion. For example, a manager didn't hire a 45-year-old candidate even though they were the most qualified, because the manager thought the candidate was "too old." This is clearly illegal age discrimination. Unintentional discrimination could occur if a judge or jury concludes that the determinative factor for an employment decision was discriminatory. That is illegal discrimination, even if the person making the decision did

not "intend" to discriminate. Most discrimination is established through indirect evidence. Seldom do managers "admit" their employment actions were informed or motivated by discriminatory factors. If a manager is shown to have hidden biases, prejudices or stereotypes that were shared in the workplace, a judge or jury might conclude that the employment action was discriminatory, even if the manager didn't consciously intend to discriminate. Persons making a claim of discrimination related to an adverse job action, have the initial burden to demonstrate that they fall within the protected classification and an adverse job action occurred. Then, the burden shifts to the employer to demonstrate a legitimate nondiscriminatory reason for the job action. There are several groups that are protected from discrimination. These protected groups and their characteristics are: One, sex and gender. This protects both men and women. The first area is equal pay for equal work. Employees must receive equal pay for equal work if they have equal knowledge, skill, ability, education or experience. Basing any decision on sex stereotypes is illegal. Number two, age 40 and over. Federal law prohibits discrimination against people who are 40 years or older. Mandatory retirement is illegal except for CEOs, airline pilots, air traffic controllers and certain public safety positions. Here are some helpful hints to prevent discrimination based on age: Avoid all age-related jokes and humor. Avoid teasing or using nicknames that are or could be construed as age-related. Don't ask people about their age. If they volunteer the information, don't follow up or question them about it. Avoid all statements that could be construed as showing bias against older workers or a preference for younger workers. Avoid using illegal age stereotypes in making employment decisions. Three, race and color. All races are protected. It is illegal to make any employment-related decisions, including hiring, firing, promotions, based on race or color. Here is a helpful hint to prevent discrimination based on race or color: Employers may be required to obtain information about an applicant's race for purposes of applicant flow and/or affirmative action obligations. In this regard, if your company has applicants self-identify their race, it is recommended to tear off and separate this information from the application. The information about race must, of course, not be used in the selection process. Number four, national origin. It is unlawful to discriminate against any employee or applicant because of the individual's national origin. Equal employment opportunity cannot be denied because of marriage or association with persons of a national origin group; membership or association with specific ethnic promotion groups; attendance or participation in schools, churches, temples or mosques generally associated with a national origin group; or a surname associated with a national origin group. A rule requiring employees to speak only English at all times on the job may violate Title VII, unless an employer shows it's necessary for conducting business. If an employer believes the English-only rule is critical for business purposes, employees have to be told when they must speak English and the consequences of violating the rule. Any negative employment decision based on breaking the English-only rule, will be considered evidence of discrimination if the employer did not tell the employees of the rule. An employer must show a legitimate nondiscriminatory reason for the denial of employment opportunity because of an individual's accent or manner of speaking. Investigations will focus on the qualifications of the person and whether his or her accent or manner of speaking has a detrimental effect on job performance. Requiring employees or applicants to be fluent in English may violate Title VII if the rule is adopted to exclude individuals of a particular national origin and is not related to job performance. Here's a helpful hint to prevent discrimination based on national origin: Before refusing to hire or promote based on an accent, make sure it's not a hearing impairment on your part. See if others have difficulty understanding the candidate as well. Five, religion. Title VII of the Civil Rights Act of 1964 prohibits employers from discriminating against individuals because of their religion in hiring, firing and other terms and conditions of employment. The Act also requires employers to reasonably accommodate the religious practices of an employee or prospective employee unless to do so would create an undue hardship on the employer. Flexible scheduling, voluntary substitutions or swaps, job reassignments and lateral transfers are examples of accommodating an employee's religious beliefs. Employers cannot schedule examinations or other selection activities in conflict with a current or prospective employee's religious needs, inquire about an applicant's future availability at certain times, maintain a restrictive dress code or refuse to allow observance of a Sabbath or religious holiday, unless the employer can prove that not doing so would cause an undue hardship. An employer can claim

undue hardship when accommodating an employee's religious practices if allowing such practices requires more than ordinary administrative costs. Undue hardship may also be shown if changing a bona fide seniority system to accommodate one employee's religious practices denies another employee the job or shift preference guaranteed by the seniority system. An employee whose religious practices prohibit payment of union dues to a labor organization cannot be required to pay the dues, but may pay an equal sum to a charitable organization. Mandatory "new age" training programs, designed to improve employee motivation, cooperation or productivity through meditation, yoga, biofeedback or other practices, may conflict with nondiscriminatory provisions of Title VII. Employers must accommodate any employee who gives notice that these programs are inconsistent with the employee's religious beliefs, whether or not the employer believes there is a religious basis for the employee's objection. Here are some helpful hints to prevent discrimination based on religion: When employees request religious accommodation, always check with human resources or other in-house experts prior to saying no. Actively explore whether accommodation is possible and document the efforts made at exploring accommodation. Six, citizenship. Noncitizens who are legally entitled to work in this country cannot be discriminated against. Legally entitled includes: U.S. citizens, permanent residents or green card holders, work authorized aliens and U.S. nationals. U.S. citizenship only may be required by law, regulation, executive order or certain government contracts. For example, federal agencies can require U.S. citizenship. This includes certain positions that require Department of Defense clearance. An acceptable question to ask in an interview is, "Are you legally entitled to work in this country?" In addition, a company is not legally required to hire people who are H-1 visa holders. In fact, if the company wants to hire someone on an H-1 visa, the company may need to establish that no U.S. citizens are otherwise available for the position. Due to the complexity of immigration issues, talk to your own in-house experts about what process to use when hiring someone who requires a work visa. Seven, veteran and military status. Do not make any employment-related decisions based on someone's membership in any state or federal military service. This includes Vietnam-era veterans from August 1964 to May 1976. Membership in the National Guard or Reserves cannot be the basis for hiring or other employment action. A member of the National Guard or Reserves is entitled to a temporary leave of absence without pay for required training or similar duty. Here's another helpful hint: Never deny a request for military leave unless you have first checked with human resources or other in-house experts. So how do you prevent discrimination? Don't make assumptions about people. Be aware of any biases, prejudices or stereotypes. Don't bring them into the workplace and make sure that they don't influence your decisions. Don't joke or make any negative comments about people's age, race, religion or any other protected characteristics. Remember, what one person finds funny, another may find offensive. Be consistent - treat like cases alike. Make sure your documentation is consistent. Here's a helpful hint: Always review your notes and any other records that contain information about the employment action you're taking. Unconscious biases can impact business decisions. Effective documentation not only helps you in being fair but can prove it if you're ever challenged by an employee. Document events. Include memos, e-mails, notes of meetings, phone calls, etc. Write objective documentation. Be honest. Be specific. Limit to objective verifiable facts. Avoid sarcasm, demeaning comments, inflammatory remarks, incriminating statements. Don't give conclusions without facts and/or examples to back you up. Beware of electronic documentation. E-mail, computer file and Web visit logs are admissible in court, belong to the company and may be accessed at any time by the employer. Read and understand your company's e-mail and electronics communications policies. Most companies allow reasonable, limited use of the Web but do not allow visiting pornographic sites, x-rated sites and do not allow usage that is contrary to the organization's no harassment, no discrimination policy. Avoid sending and receiving jokes at work. It's bad enough to tell jokes, but to write them down or store them on one's hard drive is inviting a discrimination claim. Unsubscribe from joke lists at work. If you want to receive such jokes, get them sent to your home account. Here's another helpful hint: Even if a joke or comment is not sufficient by itself to be illegal harassment, a joke or a comment about race, age, gender or any other protected characteristic (and that's most jokes) could lead a jury to conclude that a manager had a bias, prejudice or stereotype about a given group. Combine the joke with adverse employment action, even if the action and the joke were unrelated, and a jury could make

a finding of illegal discrimination. Report all complaints of discrimination to human resources or other experts designated by your company. The following are some general guidelines for selecting the most qualified candidate and avoiding unintentional discrimination, or the appearance of discrimination, in the hiring process. Hiring is one of the most important things you do as a manager. Follow all procedures and complete all forms required by your employer. Write a job description, including essential functions of the job. Identify the technical requirements and the required competencies. Write out all questions. Ask all applicants the same basic questions. Only ask proper interview questions. Hire the most "qualified candidate" for the position and be able to articulate the reasons why the candidate was the most qualified. The following guidelines will help you make sound, promotional decisions and avoid unintentional discrimination. If challenged as "discriminatory," an employer may be forced to show that the candidates it promoted were better qualified than those suing for discrimination. Write a job description. Identify the technical requirements and the required competencies. Review the performance reviews and other performance records for all candidates and determine which candidates have the required competencies. If a decision is close, perhaps interview others who have worked with the candidates to determine competencies. If you interview the candidates, focus on legitimate job-related questions and ask all candidates the same basic questions. Keep notes limited to objective, verifiable facts. These last guidelines will help managers reduce the risk of unintentional discrimination in connection with a termination. This is only a partial checklist. Always check with your in-house experts prior to terminating someone's employment. Review the "like cases." How have similarly situated employees been treated for similar behavior? If you're terminating someone for excessive tardiness, for example, how are others who are tardy being treated? You must document all "like cases" before terminating an employee for something that is objective and verifiable like tardiness. If you don't, the employee will argue that all the other employees were late too. If you haven't documented them, how do you defend against the claim? What is the standard or policy that has been violated? For performance standards, or poor performance, most employers provide opportunities to employees to improve their performance. Did you provide that opportunity? Was it commensurate with the opportunity to improve afforded to other employees with similar performance issues? Be consistent. For cases of misconduct, how were employees who did similar things treated? If five employees were disciplined for telling various jokes, and if four were warned while the fifth was fired, you may have a problem. What if the fifth person was a woman or in another protected classification? Be consistent. Never fire someone on the spot or when you're angry. If circumstances warrant, you can always suspend an employee pending an investigation. Especially for misconduct, always hear the employee's side of the story. What is their explanation? Does their explanation change the action that should be taken? Check any documentation to be sure that it supports your reasons for the termination. Always check with your human resources or other in-house experts prior to terminating an employee. Follow all employer procedures for terminations. Failure to follow an employer procedure could itself be evidence of wrongful termination or discrimination. Include another person, preferably from human resources, during the termination meeting with the employee. Remember, as a manager, you are held accountable for enforcing your company's discrimination policy and for effectively handling situations as they arise.

Host: Welcome back. This program has provided critical information regarding how a manager can avoid discrimination situations. The definition of discrimination was provided, as well as how discrimination is proven. In addition, you are now aware of specific protected groups and guidelines on how to prevent discrimination. For additional resources on Discrimination, be sure to access Reference Materials.

LESSON 4 ~ PREVENTING SEXUAL HARASSMENT-MANAGER VERSION

Host: Welcome to Preventing Sexual Harassment - Manager's Version. It is clear that employers must try to protect themselves from the liability associated with sexual harassment charges. This program will show you how to prevent and deal with sexual harassment in the workplace. You'll learn what comprises an effective sexual harassment policy and how to recognize the conditions under which sexual harassment can occur. In addition, you'll learn how to implement the proper legal procedures when a sexual harassment complaint is made. Watch now as we witness how the respected Danforth

Industries deals with a sexual harassment lawsuit. Learn, as the management staff at Danforth does, how informed managers can help decrease sexual harassment in the workplace and decrease employer liability.

Ben: Thirty-eight years in business and we've never had any major legal problems.

Teddie: I think the whole thing has just gotten out of hand. I wish we could all just sit down and talk about it.

McKendrick: Ben Danforth, talking behind my back again? Good to see you, Ben.

Ben: You remember Teddie McCray, our VP of Production?

McKendrick: You were just a kid the last time we saw one another.

Teddie: Good to see you, Mr. McKendrick.

McKendrick: Meet my two associates, Keena Eldridge and Bryan Collier. They're my right-hand people.

Keena: Hello.

Bryan: Pleasure.

Ben: Nice to meet you.

McKendrick: Well, shall we?

Bryan: Mr. Danforth, I've heard a lot about you.

Keena: I just read the feature article in the Times about the company - very impressive.

Ben: Well, Danforth Industries is a lot more than just me nowadays. We've certainly come a long way. We've tripled in size over the last several years.

Bryan: You must be proud of everything you've accomplished.

Ben: Bob, I received this fax yesterday afternoon at 4:00. This whole thing has gotten out of hand. Two of my girls are claiming sexual harassment.

McKendrick: Bryan, you want to give us the rundown on sexual harassment? Keena, you can dive in anytime.

Keena: Don't worry about that.

Bryan: Well, technically, the EEOC...

Keena: ...the Equal Employment Opportunity Commission, the federal agency charged with enforcing employment discrimination laws.

Bryan: It defines sexual harassment as unwelcome sexual advances or the request for sexual favors or other conduct of verbal or physical nature based on sex.

Keena: And that conduct has to be a term or condition of that person's employment.

Ben: Well, dag gummit, that never happened.

Bryan: Or engaging or failing to engage in that conduct is used as the basis for an employment decision affecting the person.

Teddie: We would never do that.

Keena: In short, it's unlawful if the unwelcome sexual conduct is so pervasive that it creates an intimidating or offensive work environment that unreasonably interferes with a person's work performance.

McKendrick: But let's not go too deep into the legal technicalities. I just want to take a look at what we have here.

Keena: Anne Draeger and Becky Ray Tyler.

Ben: Becky Ray - I don't get it. We all got along so well. Everyone was happy one day, then boom, this.

Teddie: Really, two of the nicest people in the whole company. It's outrageous that their attorney sent this demand letter over our nonconfidential fax line. It circulated all over the work floor before we got a hold of it.

McKendrick: Tell me about the complainants.

Teddie: Well, Becky Ray Tyler was with us about a year before she quit. She was about to be fired because of her poor attendance record. She was my administrative assistant, until a few months ago. She was a really good worker, although she had a mouth like a sailor. I mean, she'd make me blush, but we were very close. I was kind of like her big brother. She has a lot of personal problems, problems with her family. I think she'd even been hospitalized at one time because of some emotional problems. I

think she felt she could really confide in me. Things were fine. Then she got this boyfriend. That's when the problems started. She was absent a lot. She would always be leaving early. I had to write her up. I felt really bad. She is a nice girl, but I had to do my job.
Bryan: Did the two of you have any type of sexual relations?
Teddie: No, absolutely not. Totally platonic. I mean, she would flirt a lot, but it was - I mean, it was very innocent, harmless. I think it made her feel good.
Keena: What about Anne Draeger?
Bryan: She was with us two years, very sharp, very professional. I don't think I ever heard her say a four-letter word, but we all got along very well.
Teddie: I mean, there was the typical joking or an occasional risqué birthday card. I don't think she appreciated one of the birthday cards. It had, like, ten different pairs of breasts on it. One of the guys drew an arrow to the oblong set and put her initials on it. It was pretty funny, really. She was pretty cool about it. They were just jokes, nothing serious. I mean, not sexual harassment stuff.
Keena: First of all, for a manager to be involved at all with risqué birthday cards in the workplace shows some real bad judgment.
Bryan: It's surely a violation of Danforth Industries' policies.
Ben: The point is that Anne tends to be just a bit uptight. I know her and I know it didn't bother her. I mean, she didn't have to see a psychiatrist or anything.
Bryan: Well, don't let the fact that she didn't have to go to a psychiatrist fool you. The Supreme Court's ruled that psychological injury doesn't have to be established. A woman may have a case if she can show that the behavior would have been offensive to a reasonable person and it was so pervasive that it interfered with her ability to do her job at Danforth.
Keena: Usually a one-time remark or a single incident isn't enough to rise to the level of unlawful conduct.
Bryan: Unless it's a serious incidence, like one good grab. That could do it.
Keena: I'd put money on the fact that Anne and Becky Ray are going to say there were many incidents.
Bryan: They hired H. Emmet Marvin.
Keena: A real powerhouse.
McKendrick: What we're saying is Marvin would not have taken this case unless he believed he could win it.
Keena: So, we have hostile environment.
Ben: Bob, how can they say that? Danforth Industries is a great place to work. We never threaten anyone. We never touch these ladies. I just read in the paper this morning about another lawsuit where a company president was requiring the girls to sleep with him before they could get a promotion.
McKendrick: I understand what you're saying, Ben. But it's also unlawful when your work environment is so sexually charged that it interferes with the employees' ability to work.
Keena: There's no bright line when something rises to the level of unlawful. The tip-off is when people start feeling uncomfortable.
Bryan: "Uncomfortable" is the key word to keep in mind. She's claiming she was subjected to a hostile work environment.
Keena: She also appears to be claiming intentional infliction of emotional distress.
Bryan: And she's claiming assault and battery against both Teddie and Danforth.
Teddie: I mean, that's outrageous. I would never do that.
McKendrick: They do have to prove that they were subjected to unwelcome harassment, that the conduct or words were based on sex, and that it was severe enough that it altered the terms and conditions of their employment.
Bryan: Now they claim you assaulted Anne in the copy room, that you grabbed her breast.
Teddie: That is an outrageous lie. I may have, like, brushed against her or something, but grab her? It didn't happen that way.
Bryan: You know, if she were asked at the time, she probably would've said, it could have been an accident. Now she's got it fixed in her mind that Teddie grabbed her.
Teddie: But I didn't.

Ben: Great - he said, she said.
Keena: When someone goes to a lawyer, they'll go through every event to see if it could support their claim. A brush that could have been an accident becomes a grab when the lawyers get involved.
McKendrick: Let's talk about these jokes and the language in the workplace.
Ben: We never say anything that bad in the workplace. I admit, we use a lot of four letter-words - we've always done that. What would you expect on a factory floor with 250 men working long hours under hot conditions? Guys will be guys. There's nothing we can do about that. If they expected the environment to be sterile, they should have gone to work in a bank.
McKendrick: I'm afraid you're dating yourself now, Ben. That argument might have held water 20 years ago, but it doesn't anymore. The EEOC guidelines state that even in traditionally male-dominated work environments, like a factory floor or a ship-building yard, the environment must be hostile-free. It's the same standard whether it applies to our law office or to a shipyard.
Ben: What can we do about the language? You want us to spy, like all those articles on companies monitoring what their employees are doing on the Web?
Bryan: No one is telling you to spy. You need to make it clear that that type of language is not tolerated in the workplace. If you hear it, tell the employee to knock it off. Obviously, management can't use that type of language. Pretty soon the employees will stop using it around you. Management can only control what they know about.
Teddie: Well, I can tell you from personal experience, the language didn't create a hostile working environment for Becky Ray. If anything, she helped create it. She was just as bad as everybody else - maybe even worse.
Keena: Well, I agree with you that if she had a foul mouth, we can certainly use it as part of our defense to show the language in the workplace wasn't unwelcome. However, you need to know that there is a cottage industry of expert psychiatric witnesses who are called in to testify that in male-dominated workplaces like this one, the employee only talked like that so she could fit in. Here Becky Ray could argue that she only swore and told jokes because she felt like she had to be one of the gang.
Teddie: You should know that Becky Ray wore her skirts up to her - well, they were very short. She sent the message loud and clear to everyone that she didn't mind when they stared at her legs.
Keena: Because she wears short skirts doesn't mean you can say whatever you want without any liability.
McKendrick: And this type of lawsuit.
Ben: Geez, give me some good news.
Keena: Well, do you have an internal complaint procedure in place? That's going to help us.
Ben: Our managers have an open-door policy.
Bryan: With all due respect, Mr. Danforth, an internal complaint procedure is an official company process for all employees to follow in case they feel they've been aggrieved in this type of situation.
Ben: No, we don't have that. But is it that big of a deal?
Keena: It's a big deal.
McKendrick: In certain situations where there isn't an allegation of a tangible adverse job action, the company could actually avoid any liability for the actions of their employees, even when the allegation is against a supervisor or manager.
Bryan: Basically, we're talking about messing with someone's pockets, to the extent a supervisor can affect an employee's pocketbook. Whether she gets her raise or gets fired, that supervisor is considered to be the company. The company is then automatically liable for that supervisor's actions. We call it strict liability. But if it's not conduct involving money, the company isn't necessarily liable, even when it's one of the highest level supervisors or managers. So to avoid liability, you must show the company exercised reasonable care to prevent or correct harassing behavior. Part of exercising reasonable care is having an effective harassment policy that contains a complaint procedure.
Keena: You also need to establish that Anne and Becky Ray unreasonably failed to take advantage of preventive or corrective opportunities you provided; that would relinquish your liability.

Bryan: You need to know that at this time we are representing the company, Danforth Industries. We are not representing you personally. This is because at some point you and Danforth Industries could end up having a conflict of interest.
Keena: For instance, Danforth might take the position that you never assaulted anyone. However, if in fact a jury believed you did, Danforth might want to say you were acting outside the scope of your authority, and it's you that ought to be liable and not Danforth Industries. Depositions are going to be scheduled before we know it, so it's imperative that you two tell us every single detail, anything else that could be perceived as a harassment issue.
Bryan: We need to know everything. Is there anything else?
Ben: No, nothing else.
Teddie: That's really it.
Keena: I received your whole document. I just wanted to make sure it's all correct. So the information has been corroborated? Wow!
Bryan: They're here.
Keena: Can we meet in here?
Bryan: Okay.
Keena: I'm here. Anyways, keep me updated on anything else you get.
McKendrick: What have you got for us, Keena?
Keena: Well, is anyone familiar with the Foxy Den? ***Ben:*** Good God, that tacky little strip joint?
Keena: Teddie?
Teddie: If you're talking about the birthday party, that was on my personal time. It has nothing to do with Danforth Industries.
Keena: According to our information, most of your managers were there.
Teddie: Can I explain? Some of the guys went to celebrate Cal's birthday. They all wanted me to go. I popped in just to show my face. Come on, it's Cal. What am I going to say, no? It had nothing to do with official work business and it was after work hours. I was only there twenty or thirty minutes.
Keena: And when did you make the decision to send Eric Warner on the Florida marketing trip instead of Anne Draeger?
Teddie: I made it that night. Eric and I talked about the trip for a few minutes and he had some good ideas. But Anne was invited to the Foxy Den. She didn't choose to go.
McKendrick: Don't you see that that could be a problem for us? You're discussing business opportunities at the Foxy Den. The female didn't even have the opportunity to join into the discussion unless she went to the strip joint. How will that sound to a jury? H. Emmet Marvin will have a field day.
Ben: Come on, McKendrick. It's not like my management team is having sex with subordinates.
Bryan: That's the strange part, Mr. Danforth. Consensual relations between supervisors and employees are not illegal.
Keena: Don't get any ideas. One of our partners always talks about how, when there is a consensual relationship, the woman has her hand on the toggle switch. She can turn it off any time. What's welcome at one time, can become unwelcome. Then you get into legal issues again.
McKendrick: Let's be practical here. When a supervisor has a relationship with someone who reports to him, it's poor judgment. If you're going to have a relationship, have it with another employer's employees.
Bryan: You also need to keep in mind the effect on others on the work floor. It's hard to keep anything secret at work, especially this kind of relationship. Everyone would watch to see if she were getting better job assignments or wage increases or could take off more time at lunch because she was sleeping with the boss. The potential impact on morale is a no-brainer.
Keena: There are even some lawsuits that have been brought by those arguing that they were discriminated against because they didn't have the same opportunities as the woman sleeping with the boss. It's a strange world out there. I have learned that the truth is stranger than fiction.
Teddie: I feel like they're making a mountain out of a molehill.
Keena: That's the problem. It's no longer one thing, it's a bunch of things.

McKendrick: And these women are accusing the company of a hostile work environment. The Foxy Den incident falls into that category.
Bryan: A hostile work environment can also mean they've been exposed to continued explicit propositions or sexual epithets or offensive touching.
Teddie: You're talking about the copy machine again. But one little incident - nothing happened.
Bryan: Yes, perhaps an accidental brush against another employee is not egregious. Obviously, the more egregious the conduct, the fewer incidents they would need to make their case. The more incidents, the more likely it would be considered pervasive. Teddie, did you ever meet with Becky Ray alone?
Teddie: Yes. Every single little thing I do and say is as an agent of Danforth Industries? ***Keena:*** That's the position Marvin will take. Now, tell us, what would you two talk about?
Teddie: This is going to sound crazy, but Becky Ray and I were very close. She felt comfortable opening up to me. Our relationship was completely innocent. I never touched her. She was going through some tough times and I was there for her. She needed a friend.
McKendrick: Unfortunately, Teddie, when Becky Ray took the job with Danforth Industries she didn't need a friend, she needed a manager.
Bryan: Exactly what types of things would you two discuss?
Teddie: She would just talk about her boyfriends. She'd talk about how many times she had sex, even in her parents' house. I encouraged her to practice safe sex.
Keena: The problem is that now she is alleging that you kept asking her about her sex life. She says it made her uncomfortable.
Ben: What kind of damage are we looking at?
Keena: It could be tough. Think about your mother sitting on the jury. This type of case is pretty common, if you will excuse the pun. A workplace that's loose with sexual behavior and comments, there are all sorts of events that can be corroborated and documented. It's hard to tell right now, but your exposure could be quite high.
Ben: I can't believe I've been put in this situation.
McKendrick: So every incident matters in a determination of whether the environment rises to the level of pervasive. It's important to realize that we have to look at all the allegations as a whole.
Ben: Thanks to Teddie!
McKendrick: Ben, this is not an appropriate time to be pointing fingers - particularly in light of the fact that you have failed to enunciate an effective sexual harassment policy, including a formal complaint procedure. That point alone might have alleviated all of this. That was our best defense. And then there's management training - or lack thereof. If you had solid training for your managers on preventing sexual harassment, there's a good chance that none of us would be here.
Ben: I'm sorry, Teddie.
Teddie: No, I'm sorry, Mr. Danforth.
Ben: Now I bet it's time for my lesson.
McKendrick: Well, I did promise Keena and Bryan I'd talk with you about implementing an internal complaint procedure.
Ben: That would be the lesson. Frankly, I'm worried about adopting a policy. Don't you think it could put ideas into our employees' heads? We could get even more claims.
McKendrick: I've been working with companies a long time. I don't know of any situations in which adopting a policy resulted in more lawsuits. You've got to have one, Ben. It's going to give you the opportunity to investigate and resolve matters before they reach this stage. And if a claimant fails to use it, that can be used as evidence that the incidences didn't occur. Powerful stuff.
Ben: So, what should I do now?
McKendrick: To start with, your harassment policy must be very clear. It must explain what conduct is prohibited and make it clear that Danforth Industries requires both that its employees be treated with respect and that it will not tolerate harassment of any kind. The policy must also have a complaint procedure. All your employees must know to whom claims should be reported.
Ben: Easy.

McKendrick: Easy as pie. And there should be an alternate person in case that designated person is the alleged harasser.
Ben: Makes sense.
McKendrick: Now, after you receive a complaint, a thorough investigation has to be made. Don't get held up on the complaint process. Sometimes I hear that a company didn't follow up on a situation they knew about because a formal complaint wasn't filed. The standard is, Did the company know or should it have known of the conduct in issue? When it's aware of an issue, it has the legal obligation to thoroughly investigate and take prompt and effective remedial action, even if it's an informal complaint or no complaint at all.
Ben: A thorough investigation? How thorough?
McKendrick: There's only one kind of thorough to defend the company in court. Once an employee makes a complaint, Danforth Industries is on official alert. According to the law, what a supervisor knows, the company knows.
Ben: Scary thought, especially when the supervisors haven't had the training they need.
McKendrick: It's scarier how easy it is to get in trouble. A lot of supervisors want to respect an employee's request for confidentially. Sometimes an employee will confide in a supervisor about a situation that makes her uncomfortable and then asks the supervisor to keep the conversation confidential and not do anything about it. But, when a supervisor does nothing, the courts see it as the company doing nothing.
Ben: When an employee makes a complaint, do I have hire a special person to do the investigation?
McKendrick: No, just a member of management who's removed from the complainant's chain of command. They should have some type HR training. They should be aligned with or in senior management, but not so high up that people are afraid to talk.
Ben: In conducting the investigation you want to set the person that's being interviewed at ease, I guess, but be professional, right?
McKendrick: Precisely. Just gather the facts and don't make judgments. Get answers to, "who, what, when, where, why and how." Limit the number of people in the company who have knowledge of the investigation. Don't disclose any more information to the witness than you need to, and take detailed notes.
Ben: It's truly an investigation, isn't it?
McKendrick: No doubt. When interviewing the complainant, get as many specific details as you can. What happened? How many times? What was said or done by all the parties? Were there any witnesses?
Ben: Okay.
McKendrick: When conducting the investigation, it's important to determine the effect of the conduct on the complaining employee. Were the comments received as a joke at the time? Was it unwelcome? Then, determine your time frames. Perhaps the employee's problems could be related to some other factor. Maybe the complainant was passed over for promotion.
Ben: Sounds doggone serious.
McKendrick: Double doggone serious, my friend. And explain that to the person complaining. Charges are serious and your company takes them very seriously. Assure them there'll be no retaliation.
Ben: Wow.
McKendrick: Like if they say that the supervisor brushed against the complainant in the copy room but it could have been an accident. Make sure that you write down that it could have been an accident. That'll limit the complainant from elaborating on the allegations after the lawyer gets hold of her.
Ben: Like the copy room incident between Anne and Teddie?
McKendrick: Like that. Then wrap it up. Make sure you ask two things: First, after the employee goes through her list of complaints, ask the complaining employee if there's anything else. Second, ask what she wants to do about it. Again, this is good protection for the employer. In my experience, an employee comes in with a complaint of three or four comments. By the time the EEOC charge is filed, it's six or seven things. By the time the lawyer gets involved, it's ten things. By interviewing the complaining employee in the beginning, you can pin them down on exactly what her complaint is.

You're also going to want to interview other employees that the employee tells you were involved or who were witnesses, and certainly the accused harasser.
Ben: Why should we ask what she wants? And my follow-up question is, do we have to do whatever it is she wants us to do?
McKendrick: You don't need to do what she asks for; however, it is a piece of information to have. In most instances the complainant merely wants the conduct to stop. If that's the case, write down that the relief requested is to make it stop. McKendrick. Bryan, how are you? He's right here. What did Teddie say? Okay, okay, I'll see you in the morning.
Ben: Sounds like bad news.
McKendrick: It seems Becky Ray and Anne went to another supervisor to complain about these issues. He forgot to mention it to anyone.
Ben: Oh, great.
McKendrick: Everyone except Teddie.
Ben: I feel my retirement slipping away.
McKendrick: Two days later Teddie called Becky Ray into his office. He told her that he had never intended to make her feel uncomfortable and was disappointed that she hadn't come directly to him about her concerns.
Ben: I can see why he may have wanted to do that, but it looks bad?
McKendrick: She was embarrassed and felt that she was being retaliated against. Knowing Teddie, I'm sure he wasn't, he was just trying to work things out. But that's not how Becky Ray and Anne see it. Remember, they are the subordinates. They rightfully understand the unequal balance of power. Perceptions, you know? Ben, there's another thing. After Becky Ray complained to the supervisor about Teddie, she received her evaluation from Teddie. Her attendance went from a rating of good to that of less than satisfactory. She believes that she's being retaliated against because she complained.
Ben: That's ridiculous. She was marked down on her attendance because she didn't come to work. She called in on a number of occasions saying she was sick to her stomach.
McKendrick: Well, she has an answer for that too. She says the environment at work was so sexually charged that she dreaded coming to work every day. Specifically, she said she got sick to her stomach when she thought about coming to work. You know where I'm coming from. She says the hostile environment was so pervasive that it interfered with her ability to work.
Ben: What should I do? I mean, he's one of my best performers and I'm fond of him personally. He's been with me for years. Do I fire him?
McKendrick: I can't tell you what to do, it's a business decision. As a legal matter, you're required to take reasonable steps to make the hostile environment stop.
Ben: The problem now is that I'm very concerned about Teddie's judgment.
McKendrick: As I said, whether you fire Teddie or counsel him and tell him it better not happen again, that's your decision. There are no clear-cut answers. How about another cup?
Ben: No, thanks. I'm going to have problems enough sleeping tonight.
Host: Welcome back. As you can see, it is imperative for organizations to be prepared to deal with sexual harassment before it occurs. Fortunately, there are guidelines and procedures that employers can use to help prevent sexual harassment and limit employer liability. For additional resources on Preventing Sexual Harassment - Managers Version, be sure to access Reference Materials