



HARASSMENT IN THE WORKPLACE

Guard Your Words and Actions

Mocha Suell Outreach & Training Coordinator
St. Louis District Office



Workplace Harassment: Illegal vs. Uncivil Behavior

Mocha Suell Outreach & Training Coordinator
St. Louis District Office

Overview of Discussion

- Raise awareness about *workplace harassment* as a form of employment discrimination.
- Increase awareness of employers' and employees' responsibility to ensure a workplace free of harassment.

Overview of Discussion *(continued)*

- Provide practical guidance for employers and employees in identifying, preventing, and eliminating uncivil and bullying workplace behavior.
- Educate employers and employees about promoting a workplace environment that is comfortable for all employees.

HARASSMENT

What does it really
mean?

Harassment

Dictionary Definition

- Aggressive pressure or intimidation.
- The act or an instance of harassing, or disturbing, pestering, or troubling repeatedly; persecution
- A wide range of behaviors of an offensive nature. It is commonly understood as behavior intended to disturb or upset, and it is characteristically repetitive
- Unwelcome verbal or physical conduct

Types of Harassment

- Bullying
- Mobile
- Online
- Police
- Power
- Psychological
- Stalking



Workplace Harassment



Illegal Workplace Harassment

The Equal Employment Opportunity Commission (EEOC) and its Role

Who We Are

- EEOC is an independent regulatory commission
- Enforces federal anti-discrimination laws (employment only)
- Headquartered in Washington, D.C.
- Divided into 15 Districts, with 53 field offices

Laws We Enforce

- Title VII of the Civil Rights Act of 1964 (Title VII)
- Equal Pay Act of 1963 (EPA)
- Age Discrimination in Employment Act of 1967
- Rehabilitation Act of 1973
- Title I of the Civil Rights Act of 1991
- Americans with Disabilities Act of 1990 (ADA)
- ADA Amendments Act of 2008
- Genetic Information Non-Discrimination Act of 2008 (GINA)

Elements of Unlawful Workplace Harassment:

- Unwelcome conduct
- Protected basis
- Workplace harm
 - Tangible employment action, or
 - Hostile work environment
- Employer liability

What are the Protected Bases?

- Race
- Color
- Religion
- Sex
- National Origin
- Age (40 and over)
- Disability
- Genetic Information
- Retaliation



8 Protected Categories



race



color



national origin



religion



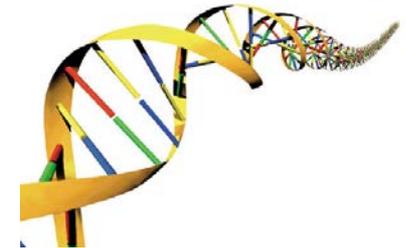
sex



disability



age (≥ 40)



genetic information

and *retaliation*

Recently Added Protections

- April 20, 2012: Commission issues decision stating that discrimination based on **GENDER IDENTITY (TRANSGENDER STATUS)** is recognized under Title VII.



Who Is Involved In Workplace Harassment?

- Victims:
 - Male or female
 - Can be unintended third party
- Harasser:
 - Male or female
 - Can be supervisor, co-worker, or non-employee
- Victim and harasser can share the same protected class(es)

What is Prohibited?

- Sexual advances/pressure for dates;
- Slurs, comments, jokes, and innuendos;
- Beatings, threats, inappropriate touching;
- Inappropriate gestures, pictures, graffiti, and slang expressions.

What is Not Covered?

- Simple Teasing,
- Offhand comments,
- Minor Isolated Incidents.

Obligations of Employers

- Make the workplace free of unlawful discrimination, harassment and retaliation
- Promptly and confidentially investigate complaints of discrimination, harassment and retaliation
- Where discrimination, harassment and retaliation may have occurred, take prompt and appropriate remedial action (i.e., discipline commensurate with the offense)

Other Points about Unwelcome:

What if two co-workers had a consensual sexual affair that soured, and then one of them claims that the other's persistent sexual advances constitute sexual harassment?



Scenario 1

Joyce's male co-workers frequently engage in vulgar sexual banter and horseplay in the office. They trade stories about their sexual exploits and kid about each other's sexual prowess. While Joyce has occasionally had sexual conversations with one of her male co-workers, she has let the others know that she is offended by their banter and horseplay. Joyce has complained to her supervisor, but she has taken no action.

- Is this harassment?
- Was the conduct unwelcome?

Scenario 2

Michael's male co-worker persistently makes sexual advances toward him, which he rejects. Michael complains to their supervisor, but the supervisor takes no action.

- Is this harassment?
- If so, what type and why?



Recap:

- Harassment is unlawful only if the conduct is unwelcome *and* it occurred because of a person's protected status;
- The workplace is expanded to any place at or connected with the workplace;
- Conduct that changes the conditions of the victim's employment is unlawful;
- Simple teasing, offhand comments, and minor isolated incidents are not covered;
- Anyone can be a victim of workplace harassment;
- The harasser can be a supervisor, a co-worker, or a non-employee.

Tangible Employment Actions:

- Significant change in employment status
- Tangible job benefits are granted or denied based on submission or rejection of unwelcome conduct
- Harasser is a supervisor

Some Examples of Tangible Employment Actions:

- Hiring and/or firing
- Promotion or failure to promote
- Demotion
- Reassignment
- Compensation
- Assignment of work
- Changes in benefits, terms, and/or conditions

Employer is Always Liable for Tangible Employment Actions if:

- The harasser is a supervisor;
- The harasser has authority to undertake tangible employment decision affecting the victim

Definition of Hostile Work Environment Harassment:

- Does not result in a tangible employment action
- Unreasonably interferes with an employee's work performance
- Creates an intimidating, hostile, or offensive work environment
- Anyone can commit this type of harassment—supervisors, co-workers, or non-employees

Examples of Hostile Work Environment Harassment:

- Pressure for dates
- Making offensive remarks about looks, clothing, or body parts;
- Touching in a way that may make an employee feel uncomfortable;
- Telling sexual jokes, hanging sexual posters, etc.;
- The use of racially derogatory words, phrases, or epithets;
- Demonstrations of a racial or ethnic nature, such as the use of gestures, pictures or drawings which would offend a particular racial or ethnic group;

Examples of Hostile Work

Environment Harassment (con't):

- Negative comments about an individual's skin color or other racial/ethnic characteristics;
- Negative comments about an employee's religious beliefs;
- Negative remarks regarding an employee's birthplace or ancestry;
- Negative comments regarding an employee's age when referring to workers 40 and older; and
- Derogatory or intimidating references to an employee's mental or physical impairment.

Hostile Work Environment Harassment:

- Key issues:
 - Context, frequency, and/or severity
 - “Reasonable Person” standard
- Tangible effect on person’s job not necessary
- Severe psychological harm not necessary

Employer Liability for Hostile Work Environment Harassment:

- High ranking official:
 - Automatic liability
- Supervisor:
 - Liable unless both parts of the affirmative defense are established
- Co-worker or non-employee
 - Liable if the employer knew or should have known about the harassment and did not correct it

Affirmative Defense for Hostile Work Environment Harassment:

- Employer exercised reasonable care to prevent and promptly correct any harassment; AND
- The employee unreasonably failed to take advantage of any preventive or corrective opportunities, or to otherwise avoid harm.

Co-worker Hostile Work Environment Harassment:

- Employer is liable if:
 - It knew or should have known of harassment; and
 - It failed to take immediate and appropriate corrective action
- Employer is assumed to have knowledge if:
 - The victim complains to a supervisor,
 - The conduct occurred in the presence of a supervisor, or
 - The conduct is widespread or recurring

Scenario 3

Jonathan's co-worker, Sean, exhibits offensive behavior and made offensive remarks to Jonathan based on his race (African American). For example, Sean (who is Caucasian) sent an e-mail to the employees in their unit attaching a series of jokes beginning with the phrase "You know you're in the ghetto when..." Jonathan told Sean that the jokes were racially offensive. Sean acted surprised that Jonathan took offense. On another occasion, Sean sent another e-mail to his co-workers attaching jokes about Ebonics. Jonathan complained to their supervisor, but the supervisor took no action. Jonathan understandably is very offended and upset by Sean's conduct. Sean can't, however, show that he was demoted, negatively evaluated, or otherwise harmed in a tangible way as a result of the harassment. Jonathan did not claim that his job performance suffered or that he suffered serious long lasting psychological harm.

- Is this a hostile work environment?
- Would these statements be offensive to a "reasonable person?"

Scenario 4

Elizabeth dreads the fifteenth of each month, because it's when the coffee service vendor comes. He always leers at her and makes sexually suggestive remarks. Elizabeth has complained to her supervisor, but the supervisor says that he doesn't have any control over the coffee guy because he is an employee of the coffee vendor and not an employee of the agency. The supervisor does relay Joan's complaints to the coffee company, but no action is taken.

- Assuming the coffee guy's actions created a hostile work environment for Elizabeth, is the employer liable?

Recap:

- Unlawful harassment elements are unwelcomeness; protected basis; “tangible employment action” or “hostile work environment”; and employer liability.
 - Tangible employment actions result in a significant change in employment status.
 - The employer is always liable.
- Hostile work environment harassment unreasonably interferes with an employee’s work performance or creates an environment that disrupts an employee’s ability to work.
- Consider context, frequency, severity, and “reasonable person” standard.
- If the harasser is a high-ranking official, the employer is directly liable and does not have recourse.
- If the harasser is a supervisor, the employer is liable unless it can establish BOTH elements of a two-part affirmative defense.
- If the harasser is a co-worker or non-employee, the employer is liable if it knew or should have known and failed to take corrective action

Appropriate Preventive Actions:

- Anti-harassment policy
- Training
- Internal Complaints procedure
- Monitor policy enforcement

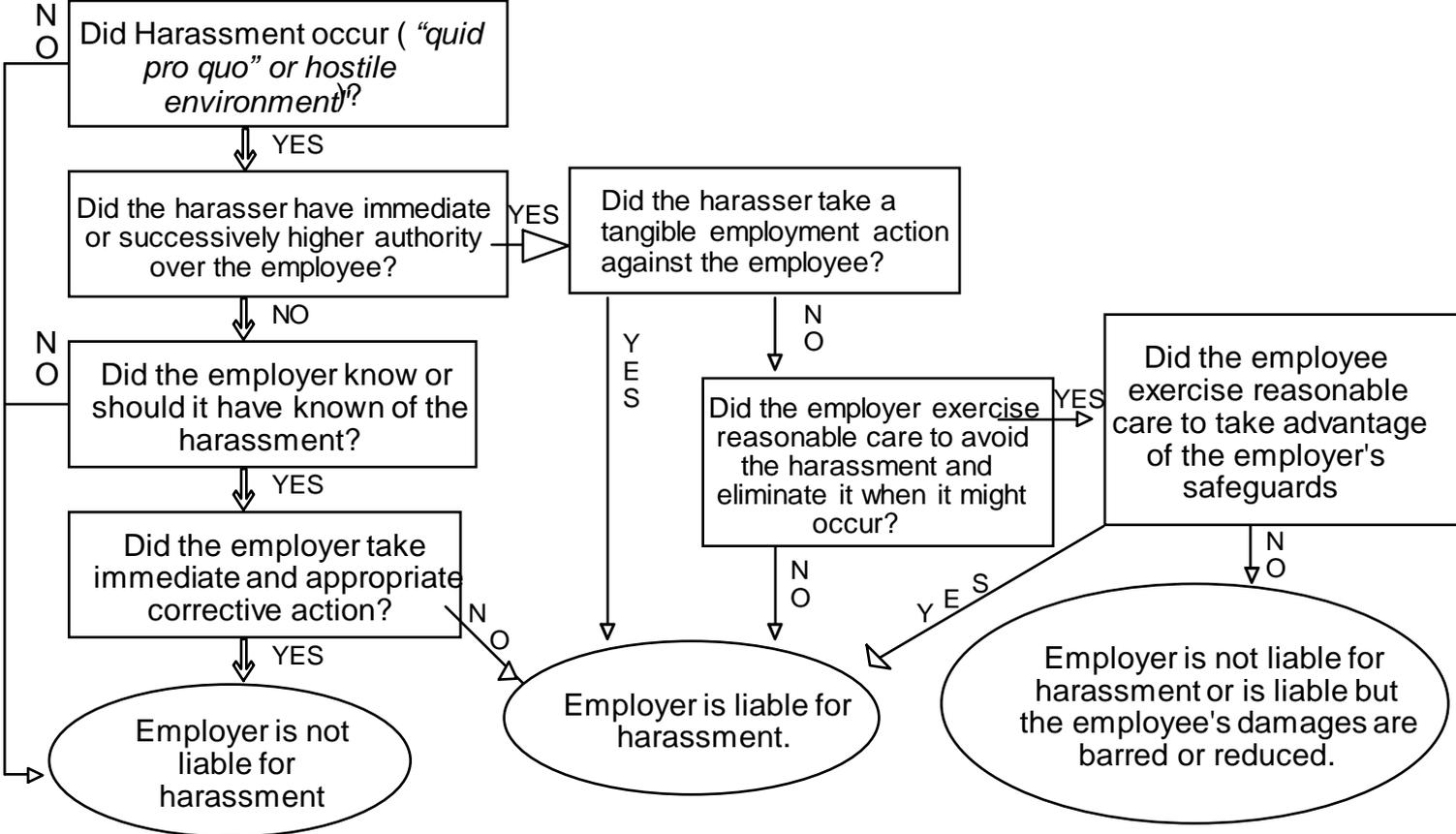
Elements of an Effective Anti-Discrimination Policy:

- Be written and well disseminated
- Protect against retaliation
- Define workplace harassment
- Establish a complaint procedure
- Create multiple paths in the complaint process
- Establish disciplinary action
- Ensure confidentiality

Recap:

- Employers should take a pro-active approach.
- Anti-harassment policy must be effective.
- Investigation should be prompt, thorough, and impartial.
- Appropriate corrective actions should stop harassment, ensure that it does not recur, and correct the effects of the harassment.

EMPLOYER LIABILITY FOR WORKPLACE HARASSMENT





**Have You Ever Worked in a Place
Where People Just Didn't Get
Along?**

Words and Actions

Illegal Workplace Harassment

vs.

Uncivil Workplace Behavior

I Can't Believe You Believe that!



People Talk ...

- 1. Perpetual motion is impossible.**
- 2. Sasquatch is a creature of our imaginations. & the Loch Ness Monster.**
- 3. Amelia Earhart was not captured by the Japanese, nor did she survive her disappearance at sea.**
- 4. The World Trade Center was not taken down by preset charges.**
- 5. JFK was killed by a lone gunman.**
- 6. The Bermuda Triangle offers no special dangers.**

People Talk ...

- 7. There are no aliens in area 51.**
- 8. UFO sightings are all misinterpretations of commonplace sights.**
- 9. Alien abduction stories are fantasies.**
- 10. Ghosts do not communicate with us.**
- 11. Time travel will not be invented at some future date. Nor will we ever travel at speeds exceeding the velocity of light. And ...**
- 12. The NASA moon landing did not take place in a TV studio.**

People talk, have opinions and sometimes disagree

Now the catch:

- Almost everyone will be offended by at least one of my assertions. And I say that with no disrespect. That's because, I'm certain to be wrong on something I stated.
- Even though I'd stake my well-being on each, I know that, if I were all-knowing, I would be surprised by some item that's true after all.
- **We must be conscious, aware and respectful of differing opinions and beliefs.**

Incivility in the Workplace

Typical words used to describe rudeness and incivility:

- crude,
- uncouth,
- coarse,
- vulgar,
- discourteous,
- uncivilized,
- ignorant,
- uneducated
- simple

Study of 800 Employers

- 96% have experienced incivility at work
- 48% of employees claim they were treated uncivilly at work at least once a week
- 10% said they witnessed incivility every day
- Percentage of workers treated uncivilly who get even with their offenders: 94%

Consequence: A Toxic Work Environment

Blatant Incivility

- losing one's temper or yelling at someone in public
- rude or obnoxious behavior
- badgering or back-stabbing
- withholding important information
- sabotaging a project or damaging someone's reputation

More subtle incivility and rude behavior in the workplace:

- a person who takes someone else's food from a shared refrigerator without permission;
- purposely does not greet or acknowledge someone at the office;
- starts an e-mail without a salutation;
- takes the last cup of coffee without making more;
- stands over a coworker who is on the phone or is typing;
- leaves the copier knowingly jammed and walks away;
- interrupts a person speaking to someone else; shouts at a coworker or superior;
- or wears clothing that is inappropriate for the work environment.

Some Reasons for Incivility

- Lack of Trust
- Lack of Self-Awareness
- Insecurity
- Stress

Consequences of Workplace Incivility

- Higher Turnover
- Legal Costs
- Lower Productivity
- Bad Reputation for the Company

Are You Civilized? (Self-test)

- Can I feel and express anger or frustration without hurting others—*and then let it go*?
- Can I accept (and even appreciate) that other people have needs and opinions which are different from my own?
- Can I encourage and enjoy the successes of others?
- Do I actively seek out ways to feel personally empowered and avoid trying to dominate people whom I perceive to be weaker?
- Do I avoid participating in dangerous gossip and bullying behaviors?
- Am I able to recognize when someone else feels angry or frustrated and keep myself from reacting impulsively in response?

Civility in the Workplace

Civility is a form of benevolent awareness.

- ❖ Respect
- ❖ Restraint
- ❖ Consideration

Sticks and Stones



dreamstime.com

Sticks and Stones might break my bones but

Sticks and Stones may break my
bones but.....

... Words will never hurt me.

Sticks and Stones



Words Can Hurt

sticks and stones
can only break
bones; but words
can shatter the
soul.

Adam Savage

Bullying Behavior

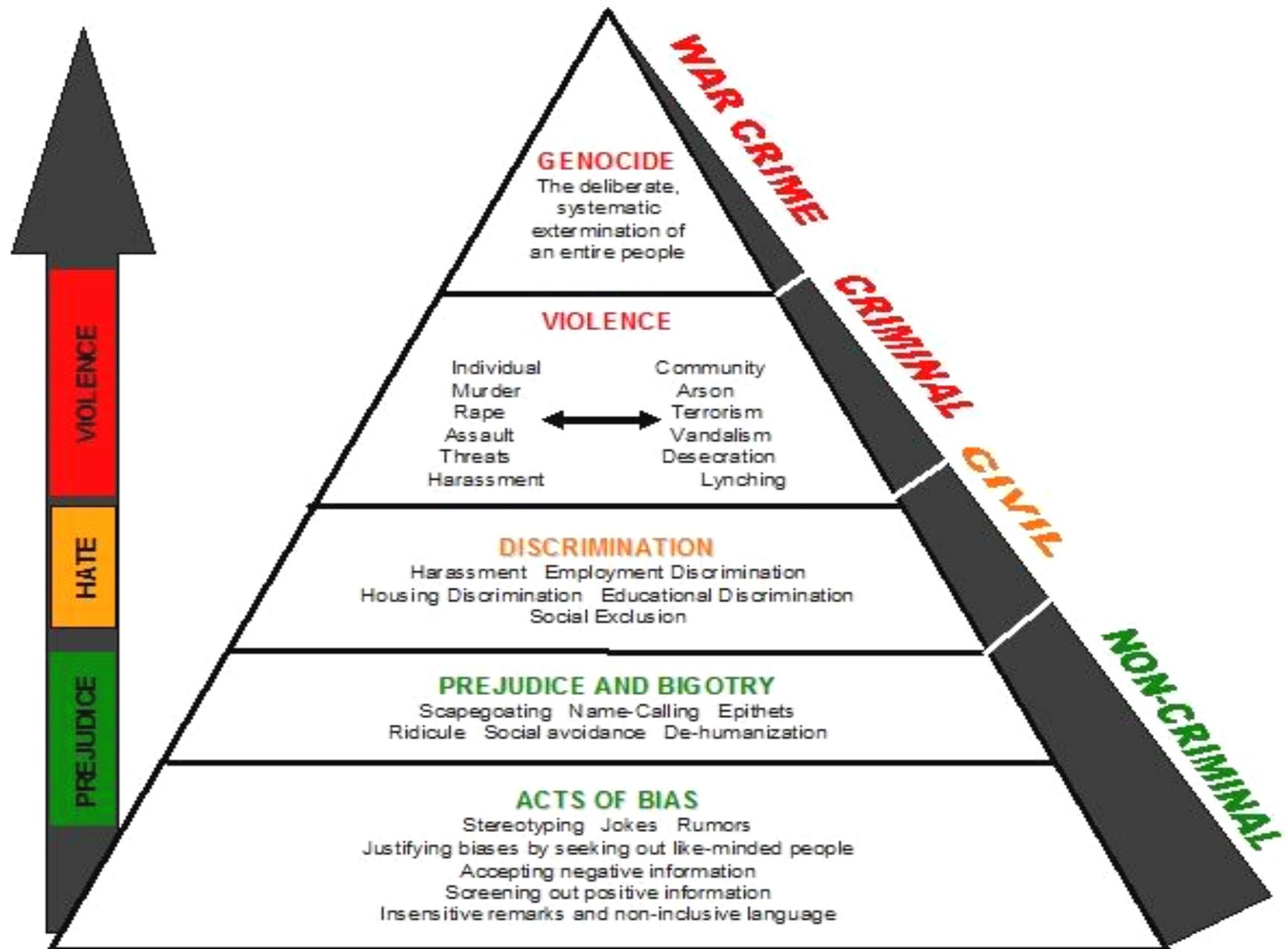
Harassment is an action that is meant to or happens to cause discomfort for the victim.

Bullying is when one individual, or party, socially degrades the victim either for the purpose of increasing their own self-comfort or for the enjoyment of others

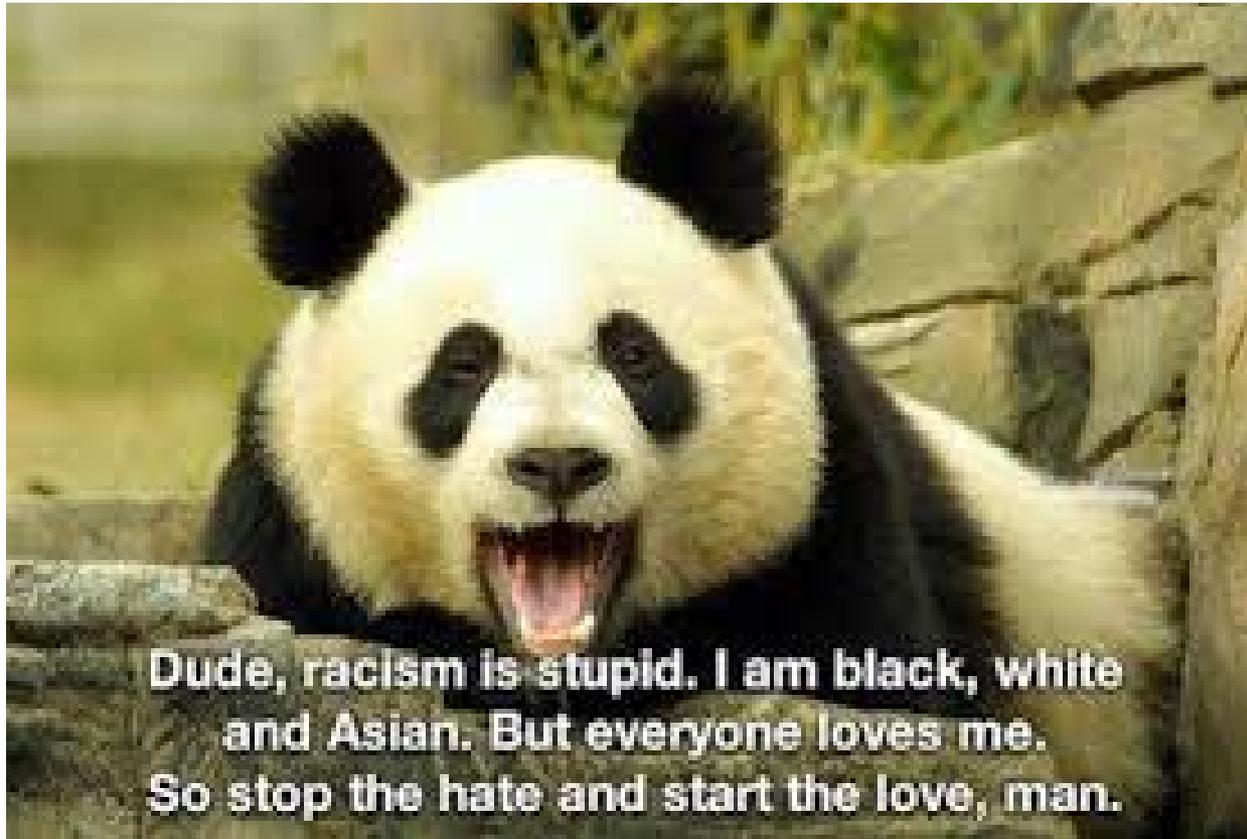
A Workplace Bully

- **Disguises their true intentions and emotions**
- **Manipulates through seduction**
- **Intimidates through verbal aggression**
- **Plays mind games to distort the thinking of others**
- **Uses political gamesmanship**
- **A workplace bully need followers**

HATE VIOLENCE PYRAMID



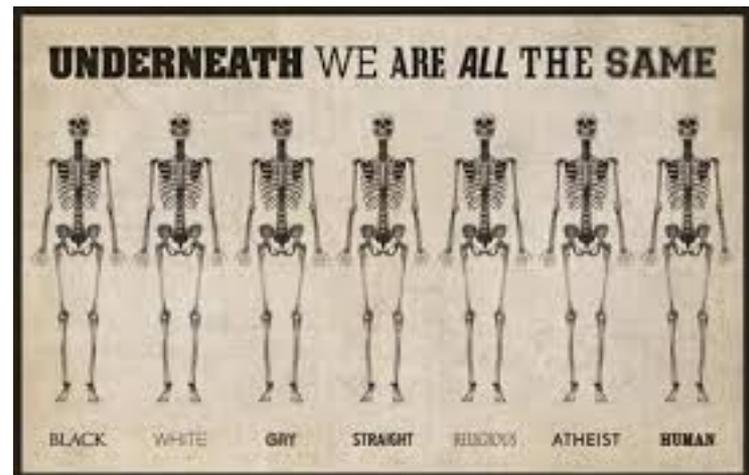
We Are Different



**Dude, racism is stupid. I am black, white
and Asian. But everyone loves me.
So stop the hate and start the love, man.**

Different – Yet the Same

- Differences – race, color, sex, height, weight, religion, education, physical characteristics
- The common thread ~~~~ We are all Human (we are much more alike than we are different)



Civility

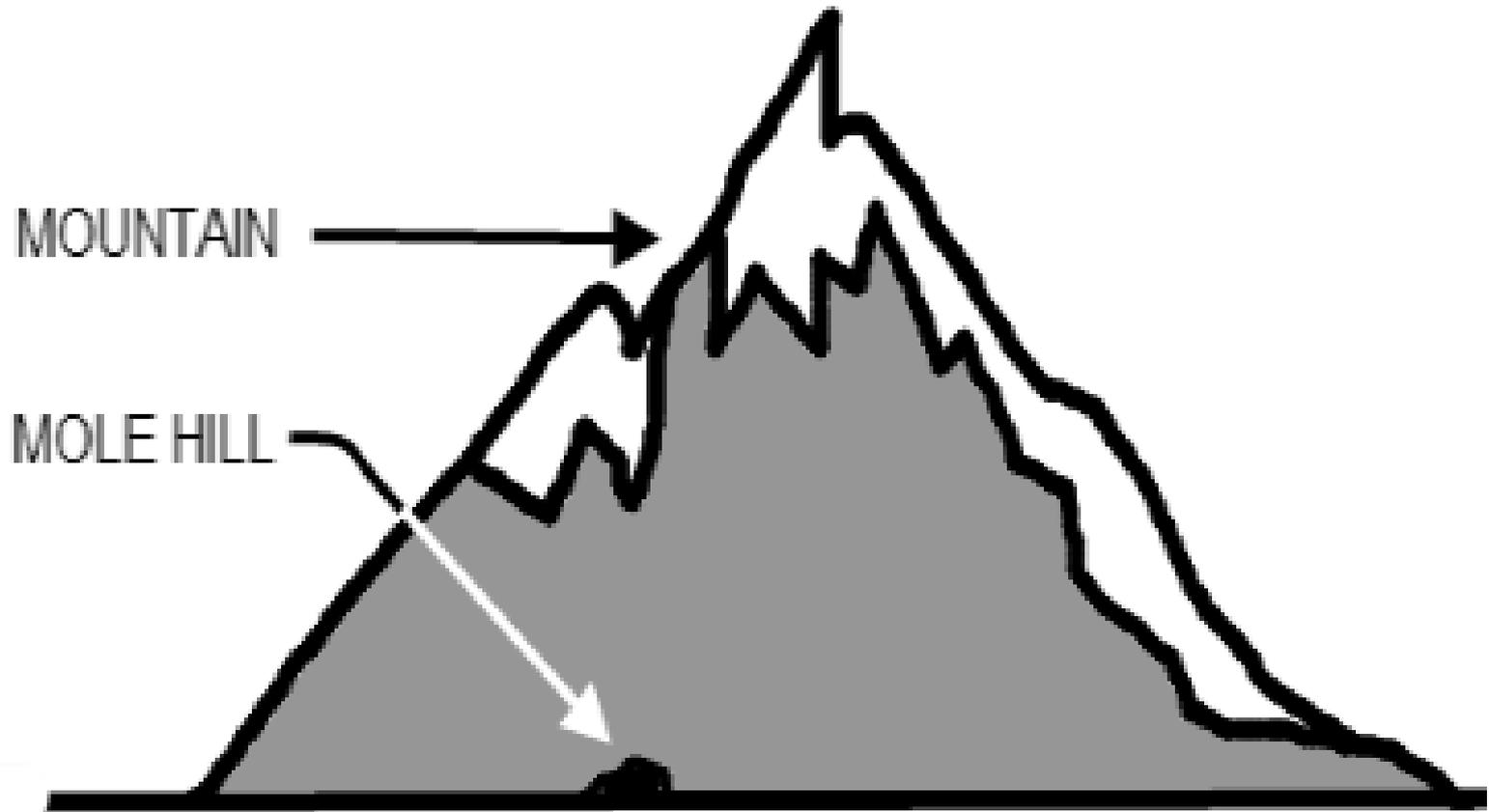
- **civilized conduct, a courtesy or politeness, or a polite act or expression.**
- **“manners,” - derived from the Latin word “hand,” referring to how we handle relationships.**
- **being civil means being constantly aware of others and attending to the community in our everyday interactions**

Do the Right Thing

- Behavior doesn't automatically change one's feelings (biases, perceptions, etc.)
- However, with consistent Civil Behavior, those biases, deep-held beliefs, convictions can be altered for the better



Let's not make ...



What You Can Do

- Lead by Example
- Barriers break down – when we open up
- Code of Conduct
- Encourage Open Communication and Feedback
- Remember we have a common goal:
 - - To Get the Job Done

Where Am I?

- Remember! Where you are:
The Workplace – Should be a professional environment
- Use restraint in your words and actions
- Are you adding VALUE to your conversation and actions?
- Are you taking personal responsibility for your words and actions?

Timeless Advice

- “Civility costs nothing and buys everything.” — Lady Mary Wortley Montagu (1689-1762)
- “Civility is not something that automatically happens. Civil societies come about because people want them to.” — Jimmy Bise, Jr. in his blog
- “Life is not so short but that there is always time enough for courtesy.” — Ralph Waldo Emerson
- “What you do not want done to yourself, do not do to others.” — Confucius, c. 500 BC

Civil Workplace Behavior

Everybody
Just Take
a Deep
Breath &
Play Nice



Questions ?

- What's On Your Mind?
- Did I Miss Anything?



We're Done!
You Made It Through!
Thank You <>

Mocha Suell, Program Analyst
Outreach and Training Coordinator
St. Louis District (*Kansas, Missouri, Nebraska,
Oklahoma and Southern Illinois*)
314-539-7949 – Office; 314-309-5275 - iPhone
Erika-Mocha.Suell@eeoc.gov