

Preventing Workplace Harassment for NY Employees v2.1

Revision Summary

Lesson Title	CA/National Text	NY Text
<p>The Workplace Color Spectrum® Tool</p>	<p>Green conduct is intentional and is deliberately patient and respectful.</p> <p>Yellow conduct is not intentionally disrespectful - but it is reactive, insensitive and rude.</p> <p>Orange conduct is a lot like yellow - but involves a legally protected characteristic. It doesn't quite meet the legal requirements for harassment - but it can quickly escalate.</p> <p>Red conduct is like orange - but it becomes illegal and toxic because the incidents are more frequent or severe.</p>	<p>Green conduct is intentional and is deliberately patient and respectful.</p> <p>Yellow conduct is not intentionally disrespectful - but it is reactive, insensitive and rude.</p> <p>Orange conduct is a lot like yellow - but involves a legally protected characteristic. It can be unlawful if it's more than petty or trivial behavior.</p> <p>Red conduct is like orange - but it's almost always unlawful and toxic because the incidents are more frequent or serious.</p>
<p>Types of Harassment</p>	<p>Hostile Work Environment Conduct</p> <p>"Hostile work environment" can be sexual harassment or age harassment or race harassment - or harassment based on <u>any</u> protected characteristic.</p> <p>To be a hostile work environment, a situation must meet these four criteria:</p> <ol style="list-style-type: none"> 1. Conduct based on a protected characteristic, AND 2. Unwelcome conduct, <u>AND</u> 3. Severe or pervasive so that it changes the workplace culture, <u>AND</u> 4. The employer (including managers) knew or should have known of the conduct and did nothing to stop it 	<p>Hostile Work Environment Conduct</p> <p>"Hostile work environment" can be sexual harassment or age harassment or race harassment - or harassment based on <u>any</u> protected characteristic.</p> <p>A hostile work environment always involves unwelcome conduct that:</p> <ol style="list-style-type: none"> 1. Is directed at someone because of a protected characteristic and 2. Has the purpose and effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.



<p>Types of Harassment</p>	<p>It's a hostile work environment when conduct is...</p> <p>Based on a protected characteristic AND Unwelcome AND</p> <p>Is "severe" (impacts ability of victim to do their job) or "pervasive" (more than one or two incidents) AND</p> <p>The employer knew or should have known about it</p>	<p>It's a hostile work environment when unwelcome conduct:</p> <p>Is directed at someone because of a protected characteristic and</p> <p>Has the purpose and effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.</p>
<p>Types of Harassment</p>	<p><i>New Card for NY Version</i></p>	<p>If you've taken harassment training before, the description of hostile work environment may seem different. It is.</p> <p>New York changed the definition of "hostile work environment" to cover more kinds of behavior.</p> <p>And New York courts and agencies haven't worked out all the details yet.</p> <p>That makes it really important to treat everyone with respect and use common sense.</p>
<p>What Makes a Culture Toxic and Red?</p>	<p>Most workplaces also go orange at times when people consciously engage in risky behavior.</p> <p>How?</p> <p>By doing or saying things related to protected characteristics that make their co-workers feel uncomfortable.</p>	<p>Most workplaces also go orange at times - when people do or say things related to protected characteristics that make their co-workers feel uncomfortable.</p> <p>Orange conduct is never okay. In fact, it can even be unlawful if its impact is anything more than petty or trivial.</p>
<p>What Makes a Culture Toxic and Red?</p>	<p>Now let's explore what it means when conduct is "severe" or "pervasive."</p> <p>To start, we can acknowledge that no work culture is perfect.</p> <p>Very few are green all the time because it takes deliberate intention to be green.</p> <p>And it's unusual for any group of people to be their best selves <i>all day, every day</i>.</p>	<p>Now let's explore what it means when conduct is toxic and red.</p> <p>To start, we can acknowledge that no work culture is perfect.</p> <p>Very few are green all the time because it takes deliberate intention to be green.</p> <p>And it's unusual for any group of people to be their best selves <i>all day, every day</i>.</p>



<p>What Makes a Culture Toxic and Red?</p>	<p>So when does work turn red and toxic? Red happens when unwelcome conduct aimed at a protected characteristic is "severe or pervasive." At that point, the conduct has changed the workplace and interfered with someone's ability to perform their job.</p>	<p>So when does work turn red and toxic? Red often happens when unwelcome conduct is aimed at a protected characteristic and it's often either: 1. Serious and/or involves touching, or 2. A lot of little things that add up over time</p>
<p>What Makes a Culture Toxic and Red?</p>	<p>Most people get what "severe" conduct is. But "pervasive" conduct often involves a pattern of conduct - and it's sometimes harder to see the whole picture. Take a look at what "pervasive" looks like.</p>	<p>Most people get that really serious conduct like touching is a problem. But it can be hard to see the impact of a pattern of conduct. The individual actions may seem small - but the impact can be huge.</p>
<p>What Makes a Culture Toxic and Red?</p>	<p>So, red conduct that is severe or pervasive has really important legal consequences. But remember: conduct that's just short of the line is anything but okay. It creates a workplace that nobody wants to join or stay with - and that stops people from making their fullest contribution.</p>	<p>So, orange conduct can be unlawful and red conduct almost always is. But remember: conduct that's just short of the line is anything but okay. Yellow, orange and red conduct all create a workplace that nobody wants to join or stay with - and that stops people from making their fullest contribution.</p>
<p>What Makes a Culture Toxic and Red?</p>	<p>One disrespectful, orange incident is a problem, but it's not "unlawful harassment." When you have orange conduct, everyone or anyone should call it out. Conduct becomes red and unlawful when the situation is either severe (usually involving touching) or pervasive (many unwelcome, disrespectful situations). Strong, respectful work cultures limit the chance for harassment because inappropriate conduct isn't tolerated.</p>	<p>One disrespectful, orange incident is a problem, but it's not always "unlawful harassment." When you have orange conduct, anyone or everyone should call it out. Conduct becomes red and toxic when the situation is either serious(often involving touching) or is part a pattern of unwelcome, disrespectful conduct. Strong, respectful work cultures limit the chance for harassment because inappropriate conduct isn't tolerated.</p>



<p>Forms of Disrespectful and Harassing Conduct</p>	<p>The calendar images touch on sex and gender. That makes them orange.</p> <p>Even if it's just a calendar, it sends a clear message on how women are viewed.</p> <p>So this is orange because it's an isolated incident. It could quickly become red if things like this are common and tolerated - or if the images get even racier.</p>	<p>The calendar images touch on sex and gender. That makes them at least orange.</p> <p>Is it unlawful harassment? This is tricky.</p> <p>This isn't the worst kind of conduct and it's just a single incident. But it's clearly sending a message about gender. That's probably more than petty or trivial.</p> <p>So it could be unlawful.</p>
<p>The Manager's Role</p>	<p>Audra's comments were about Edward's age - which is a protected characteristic.</p> <p>While each individual incident appears minor, Edward gave several examples and said there were more. And he said other co-workers have joined in.</p> <p>That makes it a classic example of conduct that is "pervasive" and red.</p>	<p>Audra's comments were about Edward's age - which is a protected characteristic.</p> <p>While each individual incident appears minor, Edward gave several examples and said there were more. And he said other co-workers have joined in.</p> <p>That makes it a classic example of conduct that is unlawful and red.</p>
<p>A Digital Divide</p>	<p>With digital communications, it's easy to move from orange to red.</p> <p>One misguided comment about a protected characteristic - like gender - well that's orange.</p> <p>But repeat similar comments in other texts, emails and messages - and that begins to feel "pervasive" and red.</p>	<p>With digital communications, it's easy to move from orange to red.</p> <p>One misguided comment about a protected characteristic - like gender - well that's probably orange.</p> <p>But a bombshell statement in a group text or repeated texts, emails and messages - and that begins to feel red.</p>
<p>My Name Is Jennifer</p>	<p>This is a classic red situation because it isn't an isolated event. It's a pattern and that makes it "pervasive."</p> <p>Adam is engaging in a pattern of misconduct based on Jennifer's gender identity - and the organization's management is aware of the situation.</p>	<p>This is a classic red situation because it isn't an isolated event. It's a pattern and it's ongoing.</p> <p>Adam is engaging in a pattern of misconduct based on Jennifer's gender identity - and the organization's management is aware of the situation.</p>
<p>Awkward Missteps</p>	<p>If they're an isolated incident, Terry's comments are technically orange as they relate to sexual conduct and gender.</p> <p>It isn't the most serious kind of orange - and he tries to correct himself.</p> <p>But if this continued, it could become "pervasive" and move from orange to red.</p>	<p>If they're an isolated incident, Terry's comments are probably orange as they relate to sexual conduct and gender.</p> <p>It isn't the most serious kind of orange - and Terry tries to correct himself.</p> <p>This could become red if Terry's words or actions intensify or become a pattern.</p>



<p>Reacting to Scary Times?</p>	<p>Mike's making work decisions based on the gender of the people working for him.</p> <p>That's a protected characteristic and makes his conduct orange.</p> <p>And it's having a real impact - on who gets mentoring and how his team operates.</p>	<p>Mike's making work decisions based on the gender of the people working for him.</p> <p>That's a protected characteristic and makes his conduct orange.</p> <p>And it's impacting who gets mentoring and how his team operates - so it's probably unlawful.</p>
<p>The Dancing Machine</p>	<p>Tim's conduct is borderline red.</p> <p>First, it was clearly unwelcome and involved a protected category - gender - and is sexually charged behavior.</p> <p>Second, while there are worse examples, Tim's touching and dance moves were sexual and inappropriate. So even this one incident could be "severe."</p>	<p>Tim's conduct is red.</p> <p>First, it was clearly unwelcome and involved a protected category - gender - and is sexually charged behavior.</p> <p>Second, while there are worse examples, Tim's touching and dance moves were sexual and inappropriate. That's more than petty or trivial and over the line.</p>
<p>The Bully at Work</p>	<p><i>New Card for NY Version</i></p>	<p>Yes! We know that harassment involves action based on a protected characteristic.</p> <p>So being bullied because of a protected characteristic <u>is</u> harassment.</p> <p>But all bullying - whether related to a protected characteristic or not - is toxic and unacceptable.</p>
<p>Bystanders to Upstanders</p>	<p>This situation is at least orange. Adam's clearly making a sexual advance.</p> <p>It could move into the red zone if Adam continues this kind of behavior or pursues more physical contact.</p>	<p>This situation is probably red.</p> <p>Adam's clearly making a sexual advance and his conduct involved intimate touching.</p> <p>And the fact that Adam cornered Tricia before making his move makes things worse.</p>
<p>Bystanders to Upstanders</p>	<p>Hostile Work Environment</p> <p>What if Jake hadn't intervened and Tricia didn't report it?</p> <p>Adam might try his storytelling again - and he might go even further next time.</p> <p>We don't have a situation here that meets the definition of "red" behavior because we only see one incident.</p> <p>But when behavior isn't called out, the bad actor often keeps going. And that's when the behavior does become red.</p>	<p>Hostile Work Environment</p> <p>What if Jake hadn't intervened and Tricia didn't report it?</p> <p>Adam might try his storytelling again - and he might go even further next time. Or he might do the same thing to others.</p> <p>But when behavior isn't called out, the bad actor often keeps going.</p>



<p>Speaking Out - and Up - at Work</p>	<p>Ben has a right to his opinion - but his choice of forum and how he states his opinion matters.</p> <p>Ben made some inflammatory statements around a protected characteristic - gender.</p> <p>That makes his conduct orange.</p>	<p>Ben has a right to his opinion - but his choice of forum and how he states his opinion matters.</p> <p>Ben made some inflammatory statements around a protected characteristic - gender.</p> <p>And given their nature and reach, they could cross the line into unlawful.</p>
<p>Speaking Out - and Up - at Work</p>	<p>Why Isn't This Just Red Behavior?</p> <p>Red conduct is either more frequent or more severe than orange conduct.</p> <p>That difference is what often makes conduct cross the line into unlawful harassment.</p> <p>Ben's conduct could have been red if it was just the latest example of a pattern of conduct.</p>	<p>Why Isn't This Just Red Behavior?</p> <p>Red conduct is usually more frequent or more severe than orange conduct.</p> <p>Right now, this is just one incident. It wasn't directed at a specific person and it didn't involve touching or physical contact.</p> <p>So is the behavior acceptable? No. Is it unlawful? Likely. But it's not quite red.</p>
<p>Eyes Wide Open: Co-Worker Relationships</p>	<p>"Harassment" is a legal concept and the facts here don't quite meet the requirements.</p> <ol style="list-style-type: none"> 1. Terry only asked Sally once. 2. He didn't know the conduct would be "unwelcome" 3. One invite doesn't rise to the level of "severe or pervasive" 4. There's no indication the employer knows about any of this. <p>For now, this is not a legal issue.</p>	<p>"Harassment" is a legal concept and the facts here don't quite meet the requirements.</p> <ol style="list-style-type: none"> 1. Terry only asked Sally once. 2. He didn't know the conduct would be "unwelcome" 3. There's no indication the employer knows about any of this. <p>For now, this is not a legal issue.</p>
<p>Reporting, Investigations and Workplace Policies</p>	<p>What's the big picture take-away from this program?</p>	<p>Click here for a Lesson Guide for this program.</p> <p>As you think about what you've learned, what's the big picture take-away?</p>