



HOGWILD 2022

**R.E.S.P.E.C.T.
(DON'T STAND SO CLOSE TO ME)
EMPLOYMENT LAW UPDATE
SEXUAL HARASSMENT IN THE
WORKPLACE**

**CLARISSA M. RODRIGUEZ & REBECCA S. HAYWARD
DENTON NAVARRO ROCHA BERNAL & ZECH, PC**

WHAT IS HARASSMENT IN THE WORKPLACE

Offensive Conduct:

- Physical
- Sexual Harassment
- Discriminatory
- Psychological
- Bullying (Cyber, verbal, etc)
- Third Party Harassment

AMC ARTISAN FILMS





HARASSMENT: WHAT IS THE LAW?

Title VII

- The City or any of its employees, may not discriminate against any individual with respect to compensation, terms, conditions, or privilege of employment because of such individual's race, color, religion, sex, or national origin, disability, genetic information, or veteran's status
- Applies to:
 - Employees
 - Residents
 - Customers
 - Visitors

Age Discrimination Act

Genetic Discrimination Act

Disabilities Act

Pregnancy Discrimination Act

RULES TO PROVE HARASSMENT

Belong to a protected class

Subjected to unwelcome sexual [or other] harassment

Complaint of harassment is based on sex [or other] harassment

Harassment resulted in tangible employment action

- Affected a term, condition, or privilege of employment

WHETHER ACTION “AFFECTED TERM, CONDITION OR PRIVILEGE OF EMPLOYMENT”

- Two types
 - Quid pro quo: suffered “tangible employment action” as a result of harassment
 - Hostile environment: no “tangible employment action”



QUID PRO QUO HARASSMENT

- Usually for Sexual Harassment
- Blatant; out there – “this for that”
- Harassment- if you don’t let me, I will fire you.
- Aspect of job is performance of a specific act.
- Position of authority- supervisor- power over the employee

Examples:

- A supervisor demands sexual favors in return for better treatment of a subordinate, or threatens the subordinate with firing, demotion, or transfer unless sexual favors/go on date, etc are given
- Ask for raise, but only if you give me a kiss.



HOSTILE WORK ENVIRONMENT HARASSMENT

LEGAL TERM!!

Unwelcome conduct *severe or pervasive* enough to create a work environment that is intimidating, hostile or abusive on a continual basis and a affects working conditions and/or employment.

- Pornography
- Vulgar Language
- Sexual Touching
- Sexual Propositions
- Degrading Comments
- Embarrassing Questions
- Sexual Jokes

SEVERE OR PERVASIVE

Frequency

Degree to which conduct is physically threatening or humiliating

Degree to which the conduct interferes unreasonably with an employee's work performance

Physically threatening, humiliating- mere offensive utterance

Interferes with work

Undermines workplace competence



TANGIBLE EMPLOYMENT ACTION

- Significant change in employment status, such as hiring, firing, failing to promote or give a raise, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits or work conditions

NEWS LAWS - SEXUAL HARASSMENT

- REPORT THE ISSUE TO SUPERVISOR
- PSI
 - *Immediate* (SB45 changed “prompt” to “immediate”) Remedial Action
 - Separate
 - Investigate
- Employees are expected to promptly raise questions and concerns regarding alleged violations of policy.
 - Addressed quickly and can assist in preventing problems from occurring or escalating
- What if my supervisor is the alleged harasser?

NEW LAWS

- Supervisor
- Timeline under TWC- 180 days to 300 days after alleged harassment occurs
- City liability expanded- SB 45
 - “Immediate and appropriate corrective action”
 - Stricter than the federal law of prompt remedial action
 - TWC- requirements in writing is not immediate; verbally therefore can be considered immediate
- Employees & Officials
 - Employer- “any person who acts in the interests of an employer in relation to the employee”
 - “Know or should have known”

4 Types of Sexual Harassment

Verbal/ Written

Remarks of a sexual nature about a person's clothing, personal behavior, or body. Sexually explicit statements, questions, jokes, or anecdotes.

Requesting sexual favors or dates.

Spreading rumors about a person's personal or sexual life.

Coercion of sexual activity by threat of punishment.

Excessive and unwelcomed flirting.

Physical

Impeding or blocking a person's physical movement.

Inappropriate and unwanted touching of a person and/or their clothing.

Other inappropriate touching including kissing, hugging, patting, stroking, or rubbing.

Playing music with offensive or degrading language.

Purposefully brushing up against another person.

Non-Verbal

Looking a person's body up and down.

Making derogatory gestures or facial expressions of a sexual nature.

Frequently following or standing too close to a person on purpose.

Whistling or staring in a sexually suggestive or offensive manner.

Visual

Displaying sexually suggestive objects, pictures, cartoons, posters, calendars, or computer screens.

Showing other people sexually suggestive text messages or emails.

Sharing sexually inappropriate images or videos, such as pomography, with co-workers.

The law defines sexual harassment as unwelcome verbal, visual, non-verbal or physical conduct of a sexual nature or based on someone's sex that is severe or pervasive and affects working conditions or creates a hostile work environment.

For more information: U.S. Equal Employment Opportunity Commission (EEOC) / www.eeoc.gov

WHAT BEHAVIOR MAY BE HARASSING?

Verbal

- Derogatory, explicit or offensive comments, epithets, slurs or jokes;
- Inappropriate comments about an individual's body, appearance, or culture;
- Repeated unwelcome propositions or flirtations; veiled threats;
- Direct or subtle pressure or repeated unwelcome requests for dates or activities.

WHAT BEHAVIOR MAY BE HARASSING?

Visual

- Offensive gestures or the display of suggestive, obscene, or derogatory objects, pictures, cartoons, posters or drawings.
- Pictures, cartoons, posters, or drawing depicting a protected class in an unflattering, derogatory, or humiliating manner.
- Caricatures or stereotypical representations

PHYSICAL & VERBAL

Email complaint:

Comments- “declaring sexual desires for other employees” in the department

Employee approaches the other employee and pushes genital area onto a part of another employee’s body

Employee does not consent or ask for this type of behavior

ANTI-RETALIATION PROVISIONS

- Law and City Policy
 - **No retaliation** for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit

OR

- Opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws

CONSEQUENCES OF A VALID COMPLAINT OR INVALID COMPLAINT

Findings of discrimination, harassment or retaliation against an employee may result in discipline up to and including discharge.

- Supervisors may experience more severe discipline for the same type of behavior than other employees.

No retaliation may occur for a good faith report.

THIRD-PARTY & NON-PARTY HARASSMENT

Behavior not found offensive by some employees can facilitate an offensive environment for other employees.

- A group of employees talking about each other's sex lives in the presence of another person who feels very uncomfortable about such discussions and finds offensive

Harassment on-the-job by a non-employee, for example, *Vendors, Contractors, Customers or Visitors* is **NOT** excusable behavior.

Harassment on-the-job by a non-employee **CAN** lead to harassment charges, just as harassment by and employee would.

Supervisors are responsible for **DOING SOMETHING** about this too to protect employee

Example: If a customer constantly flirts with you and makes unwelcome sexual advances when they come by your workplace, your employer should do something about it when you report.

WHAT ARE MY RESPONSIBILITIES?

Personnel Policies

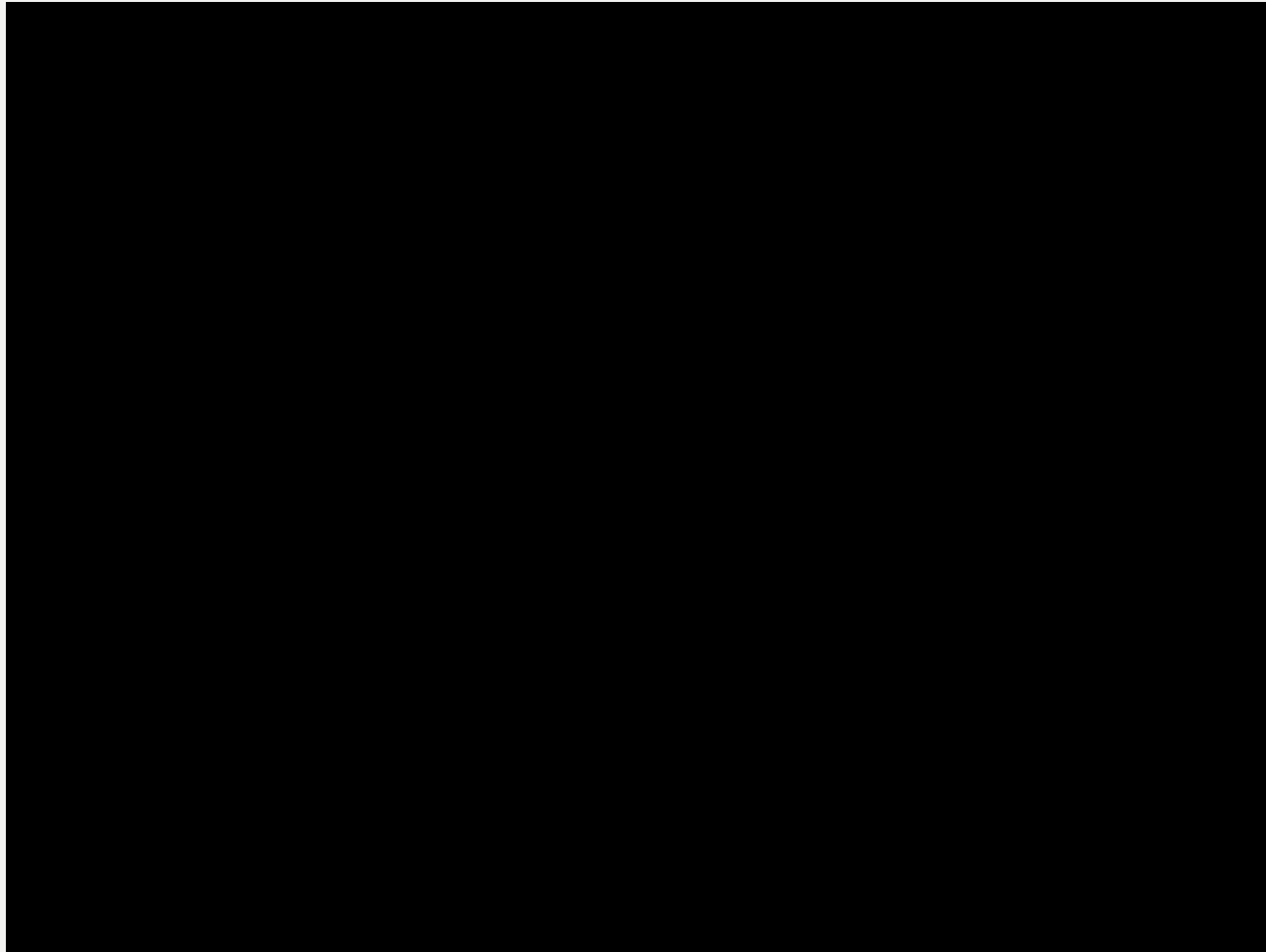
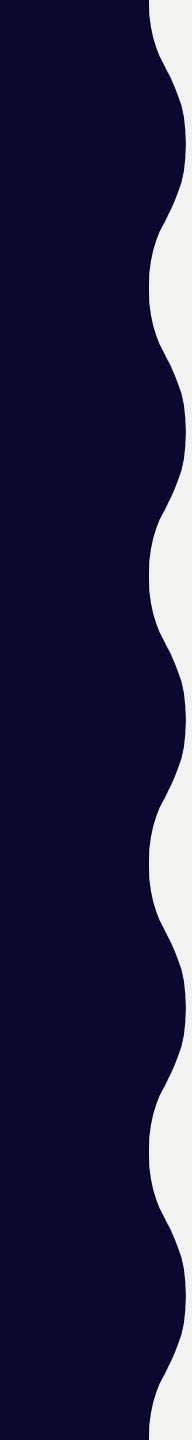
City Code

- Ethics Code- Discrimination prohibited

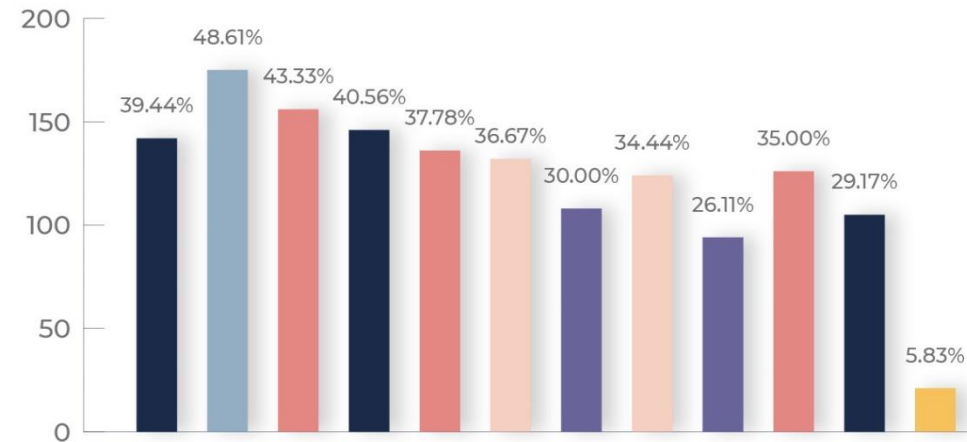
Federal and State of Texas
Laws

WHAT TO DO IF YOU OBSERVE BEHAVIOR OR EXPERIENCE THE BEHAVIOR?

- Every employee is responsible for maintaining a professional environment free of discrimination, harassment, and retaliation, and for bringing to the attention conduct that interferes with providing a work environment free of discrimination, harassment and retaliation.
- Reporting
 - Need not be recipient of alleged harassment
 - If you are offended by behavior, you can be a complainant
 - Investigate no matter what
 - Recognize behavior
 - Set example of Respect - Workplace



If yes, what type of harassment have you experienced [choose all that apply]?



39.44%	Physical harassment	30.00%	Racism
48.61%	Personal harassment/in-person bullying	34.44%	Gender-based harassment
43.33%	Discriminatory harassment/bias	26.11%	Socioeconomic harassment
40.56%	Online harassment/cyber bullying	35.00%	Abuse of power
37.78%	Sexual harassment	29.17%	Microaggressions
36.67%	Psychological harassment/misuse of power	5.83%	Other

BEST PRACTICES:

STOP

Harassment/disrespect
before it
starts.

UNCONSCIOUS/IMPLICIT BIAS

- We all have unconscious biases –
 - when our brains make automatic judgments & assessments of people and situations. Treat people the same, no matter race, religion, gender, size, age or country of origin. Include all relevant coworkers in meetings, discussions, trainings and events.
 - While not every person can participate in every activity, do not marginalize, exclude or leave any one person out. Provide equal opportunity for employees to participate in committees, task forces and improvement teams.



Source

Target

Observer

Person in Authority



SOURCE

- The source of the disrespectful behavior has the responsibility to stop behaving in such a manner.
- What about US? Are we part of the problem? Have we added to the disrespectful behavior?

TARGET

- The **target** must help confront the Harassment/Harasser!
- If we are offended by other's actions or words, we need to let them know and ask them to stop.



Consider this:

- The source of the disrespectful behavior may not even know that his or her behavior is offensive to us or others.
- How can this person correct his or her behavior if he or she is unaware of its impact?

OBSERVER

- Those who observe disrespectful or harassing behavior have a responsibility to stop it when it occurs; and one who **notices** such is NEVER an innocent bystander!

It is simply the right thing to do.

Is it offensive to you?

What do your policies say to do?



PERSON IN AUTHORITY



Every person in authority has a duty to keep the workplace free from offensive and harassing behavior.



Each person in authority is crucial to creating a respectful workplace.



Who are these people? Supervisors, Department Heads, Management



Chain of Command- Do not ignore report!

PERSON IN AUTHORITY

Handling the Harassment Complaint:

- Take the report seriously
- Listen, sympathize, but don't judge
- Don't delay
- Respond to concerns
- Document & Investigate
- Follow up on the complaint
- Avoid using "dangerous words"





Source

Target

Observer

Person in Authority



DANGEROUS WORDS

When responding to a complaint, be careful that these words don't come out of your mouth:

- ✓ It's just teasing—no big deal.
- ✓ The people in our work would never do...
- ✓ I know he/she didn't mean anything like that.
- ✓ It's your fault for dressing so provocatively.
- ✓ You need to learn to handle these things.
- ✓ Just ignore it. That's the way things go around here.
- ✓ He puts his arms around everyone.
- ✓ Why can't you learn to accept a compliment?
- ✓ You must have wanted it, otherwise you would have told him no.
- ✓ That's how they do things where he comes from.
- ✓ It's just a joke. Lighten up.
- ✓ No one's filed a charge, so our hands are tied.
- ✓ We've never had a complaint, so we don't have a problem.
- ✓ This kind of behavior is all part of growing up.
- ✓ It's a matter of hormones we can't control that
- ✓ If we had to discipline every employee who used bad language, we'd never get anything else done.
- ✓ It's just a prank that got out of hand.



CIVILITY AND A RESPECTFUL WORKPLACE



WHY RESPECTFUL BEHAVIOR?

- Studies found 50% of sexual harassment cases co-workers or peers were the alleged harassers.
 - Only 26% involved the immediate supervisor.
 - Money damages for claims.
 - Harassment lawsuits usually have personal legal & financial consequences for the harasser and employer.

HOW DO WE KNOW WHAT CIVILITY IS?

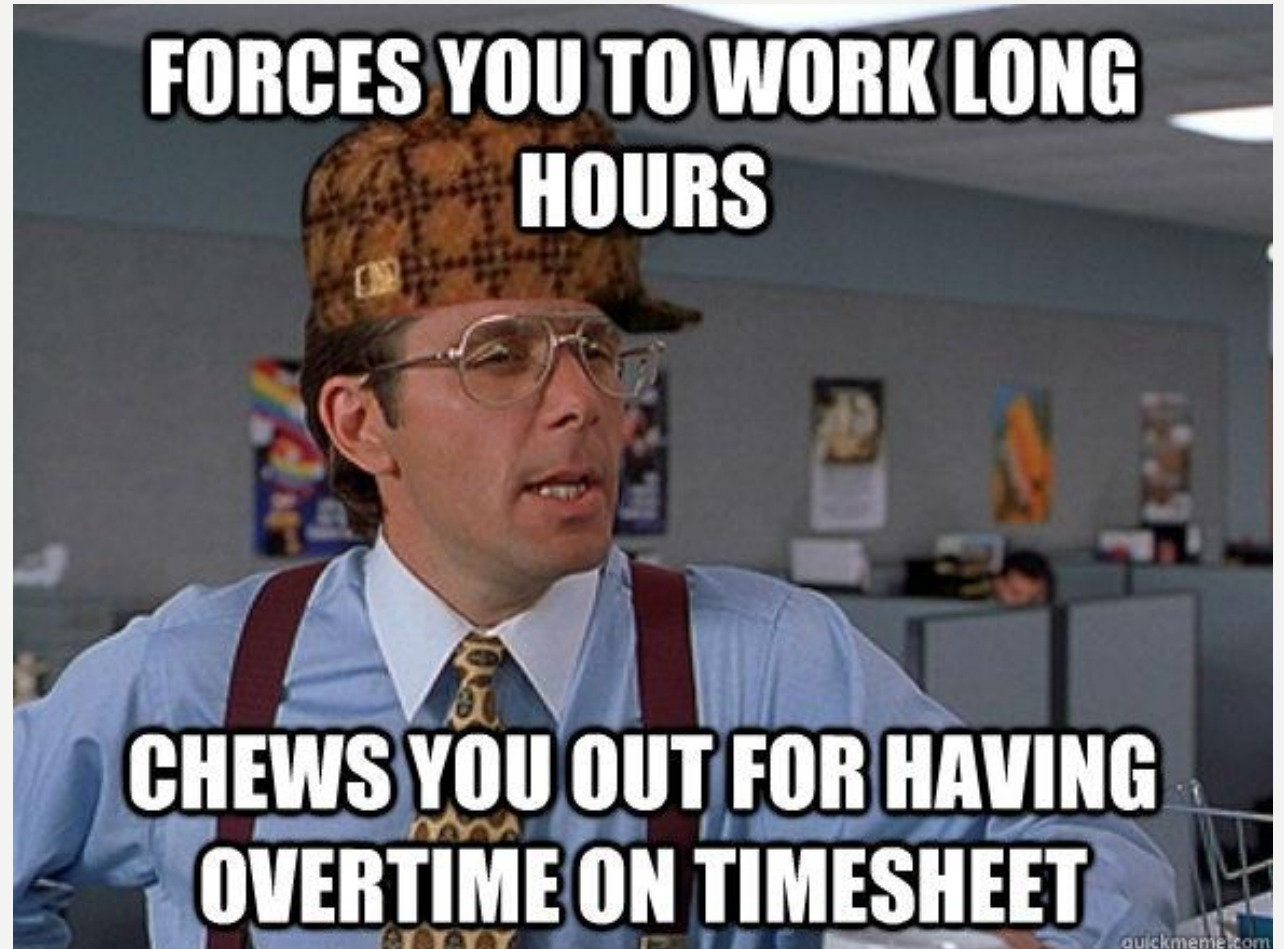
Civility usually is demonstrated through manners, courtesy, politeness, and a general awareness of the rights, wishes, concerns, and feelings of others.



**BEFORE YOU POST, ASK
YOURSELF:
IS IT KIND?
IS IT NECESSARY?
IS IT TRUE?
DOES IT IMPROVE THE
SILENCE?**

INCIVILITY AGGRAVATORS

- Long hours/overwork
- “Hot temperament”
- Workplace stress
- Inflexibility
- Passive aggression
- Hurt feelings
- Intolerance of individual differences



IMPACT: DISRESPECT IN WORKPLACE

The costs of incivility are significant

- decreased creativity,
- decreased morale,
- customer disdain—customers do not like overhearing coworkers mistreat each other—and
- time spent mending damages to relationships
- Lack of respect and 'incivility'—(such as rudeness, discourteousness, not acknowledging other staff)—can create a dysfunctional team environment, relationship breakdown, decline in productivity, and the risk of psychological injury
- Liability and claims against the City.

IMPACT

- 48% - intentionally decreased their work effort
- 47% - intentionally decreased the time spent at work
- 38% - intentionally decreased the quality of their work
- **80% - lost work time worrying about the incident**
- **63% - lost work time avoiding the offender**
- 66% - said their performance declined
- **78% - said their commitment to the organization declined**
- 12% - said they left their job because of the uncivil treatment
- 25% - admitted to taking their frustration out on customers

Source: Porath & Pearson



IMPACT

How do people deal with disrespectful workplaces?

1. **Conflict avoidance:** Try to avoid/stay away from the person, Just put up with it, Try not to make the person angry, Try not to hurt the person's feelings.
2. **Minimization:** Tell yourself it wasn't important, Just try to forget it, Just ignore it, Assume the person meant no harm/meant well.
3. **Assertion:** Confront the person, Ask the person to leave you alone, Let the person know you didn't like what was happening.



IMPACT

Coping Strategies:

4. **Informal social support seeking:** Talk with friend/someone for advice/support, Talk about it with someone you trusted
Talk with family for understanding/support.
5. **Informal organizational support seeking:** Talk with a supervisor/someone in management, Report the situation informally.
6. **Formal organizational support seeking:** Make a formal complaint.





THINK ABOUT WHAT YOU DO OR SAY

Is it:

Offensive

Annoying

Embarrassing

Frustrating

Disturbing

Threatening

ACTIVE LISTENING



Restating: Demonstrate you're listening by repeating what someone has said, "Let me see if I'm clear about this..." or "It sounds like you're saying..."



Validation: Acknowledge someone's feelings or point of view, "I appreciate your willingness to talk about such a difficult issue..."



Silence: This helps slow down a potentially difficult conversation. Give everyone a chance to think and reflect.



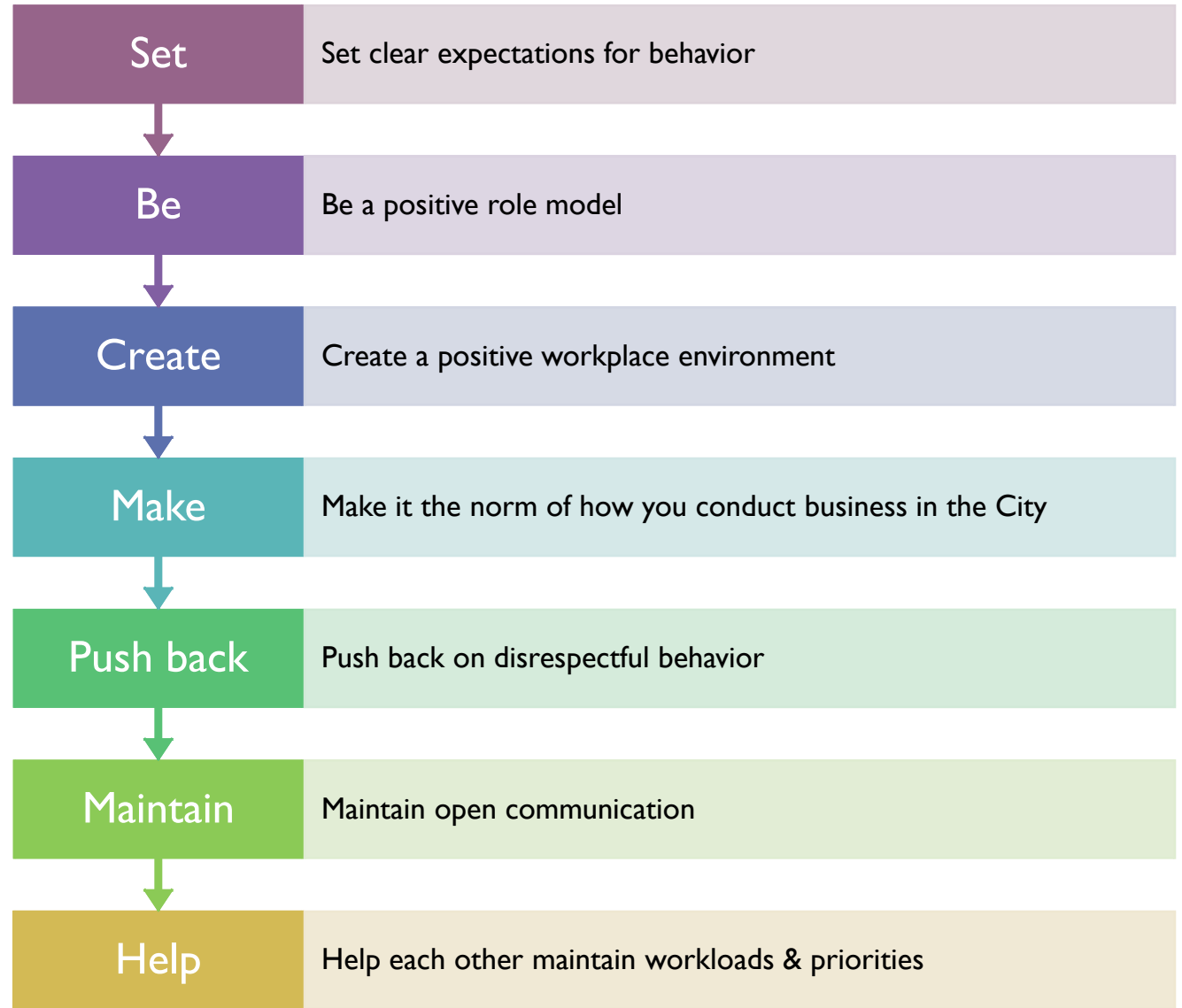
Give Feedback: Let the person know what your initial thoughts are on the situation. Share information, observations, insights. Then listen carefully.

BENEFITS OF RESPECTFUL WORKPLACE

- Improvements:
 - Morale & Job satisfaction
 - Retention [lower absenteeism/turnover]
 - Improved teamwork,
 - Increased productivity.
- Employees are better equipped to manage conflict collaboratively and cope with workplace challenge and change.
- Employees are much less likely to perceive their workload as excessive or to submit workers' compensation claims.
- Teams and organizations that are seen as positive places to work will attract and retain highly skilled staff.



TOOLS FOR CREATING A RESPECTFUL & CIVIL WORKPLACE



Back to Basics

Care about **WHAT** you say...

HOW you say it...

Before you say it!

QUESTIONS?

Clarissa M. Rodriguez

cmrodriguez@rampagelaw.com

Rebecca S. Hayward

rshayward@rampagelaw.com

[Denton Navarro Rocha Bernal & Zech,
P.C.](#)

