

Implementing Integrity: Sexual Harassment in the Workplace

Jenny Haruyama
City Manager, City of Scotts Valley, CA

Kevin Karpinski
Managing Partner, Karpinski, Colaresi & Karp

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An aerial photograph of Baltimore, Maryland, showing the harbor, city buildings, and a large glass-walled building in the foreground. The image is partially obscured by a dark blue diagonal overlay on the left side.

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The Road to Gender Equality

Jenny Haruyama

City Manager, City of Scotts Valley, CA

ICMA Conference Presenter

#ICMA2018



About Me

Jenny Haruyama, City Manager
City of Scotts Valley, CA
www.linkedin.com/in/jenny-haruyama

FIRST THING I DO WHEN I WAKE UP:

- Stay horizontal while checking emails.

WORK APPROACH:

- People may not remember what you said and did, but they always remember how you made them feel.

FAVORITE PART OF MY JOB:

- Having the ability to make a difference in people's lives, whether they know it or not.

GUILTY PLEASURE AT THE END OF THE DAY:

- Binge watching episodes of "The Office."

ONE THING ABOUT ME THAT MIGHT SURPRISE YOU:

- I have 5 kids – ages 20, 19, 14, 11, & 5, plus 2 dogs, 1 cat, 2 chickens, and 1 husband.



What the Research Says

“The more accurately our organizations represent our world, the greater opportunity we have to understand our audiences and craft our futures.”

- Samantha Rabstein, PTTOW!

- Research shows that there is a strong correlation between gender diversity and the organizational performance of a company.
- A global study found a difference in return on equity of 47% between companies with three or more women on executive committees versus those with none.
- Women use 5 out of the 9 key leadership behaviors more than men which are also considered the most effective to address global challenges of the future.

Inspiration

Individual Decision Making
People Development

Role Model

Participative Decision Making
Intellectual Stimulation

Efficient Communication
Control/Corrective Action
Expectations/Rewards

- Women make up 49.7% of the global population, but hold 4% of the leadership positions at Fortune 500 companies.

*The Female Quotient – January 2018;
Women Matter – McKinsey & Company Study - 2017*

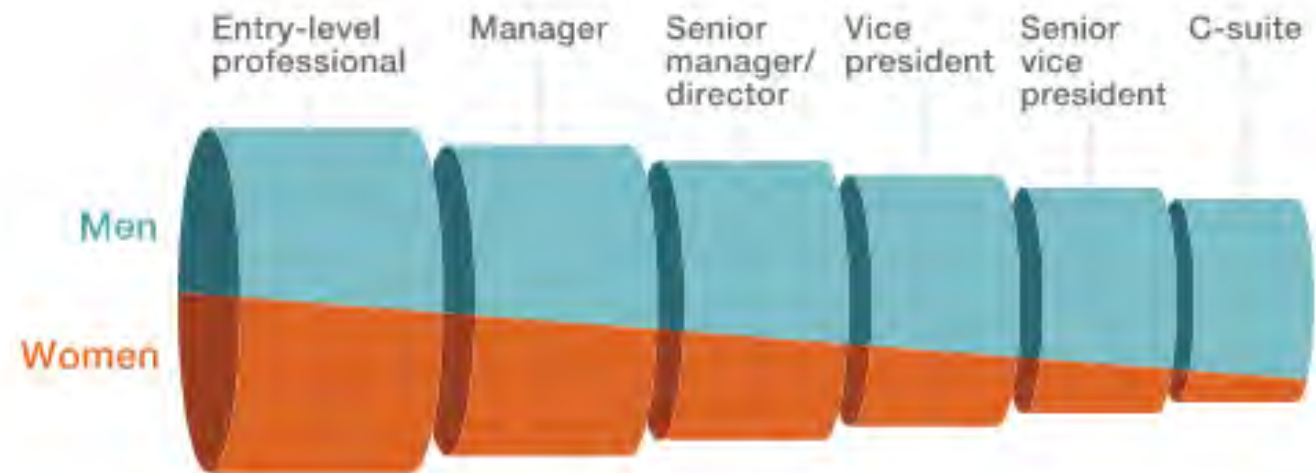


Barriers to Change

“Diversity is being invited to the party. Inclusion is being asked to dance.”

- Verna Myers

- **Women are Underrepresented at Every Level of the Corporate Pipeline**



Women Matter – McKinsey & Company Study - 2017



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- **The Corporate Performance Model**

- ✓ 75% of men and women agree that a top-level career implies “anytime, anywhere” availability to work that requires sacrifices in one’s family life.
- ✓ The “anytime, anywhere” model makes it more difficult for women who face a double burden – working and taking on majority of domestic responsibilities.

- **Perceptions about Female Leadership**

- ✓ The dominant (masculine norm) leadership style serves as barrier to advancement.
- ✓ Double edged sword: Act assertive women are perceived as bossy or uncaring; but if you act collaborative or emphatic, you lack leadership skills.
- ✓ 42% of women believe their leadership style doesn’t fit with the prevailing corporate model.
- ✓ While men and women say women are as good as leaders as men, the degree of conviction by men isn’t as strong. Only 43% of men in senior management say they have a “strong conviction” about women as leaders.

Women Matter – McKinsey & Company Study - 2017



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• Mind-Set and Gender Bias

❖ Performance Bias

- ✓ Men tend to be evaluated based on future potential; women on what they have achieved to date.
- ✓ Women receive less credit for their successes than men and are criticized more for failure.

❖ Maternal Bias

- ✓ Motherhood triggers assumptions about being less committed to a career. As a result, women tend to be held to a higher standard and are offered fewer leadership opportunities.
- ✓ 62% of men and women agreed that having children is compatible with a top-level career for women; 80% agreed that it is more compatible for men.

❖ Confidence

- ✓ Women are ambitious as men but less confident that they can succeed. 58% of women compared to 76% of men agree they will reach a top management position.
- ✓ While women saw themselves as equally capable as men; men considered themselves more capable.

Women Matter – McKinsey & Company Study - 2017

• Transform the Culture

❖ Build a Diversity-Enabling Infrastructure

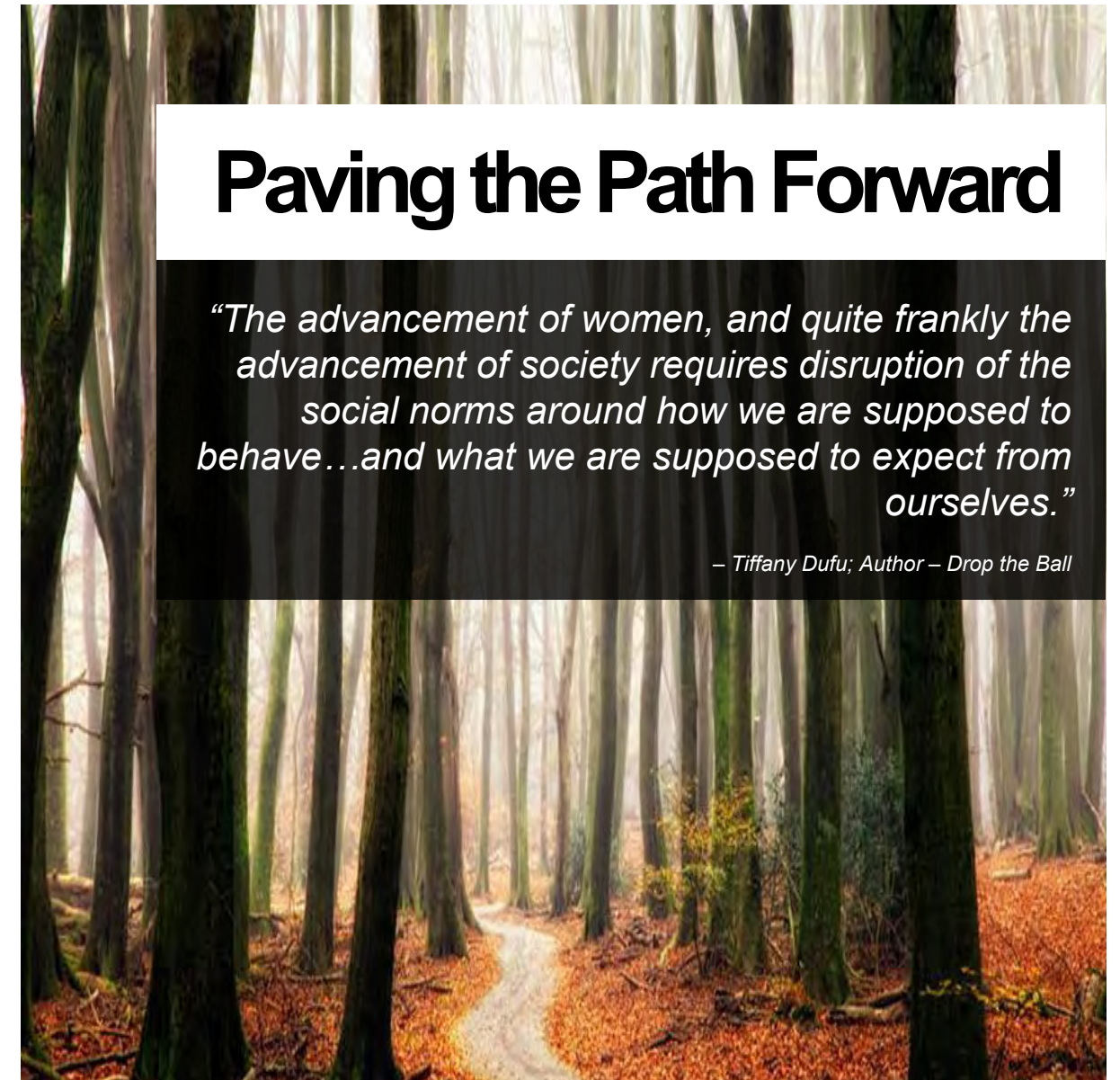
- ✓ Flexible Working Schedules
- ✓ Extended Leave Policies
- ✓ Schedule Work Meetings during Business Hours
- ✓ Choose Who you Want to Work for; Ask for What you Need

❖ Grow the Pipeline

- ✓ Find Hidden Leaders
- ✓ Hunting, Fishing, and Trawling

❖ Support Women's Leadership Development

- ✓ Encourage Participation in Coaching Programs
 - ICMA: <https://icma.org/icma-coaching-program>
 - ICMA 1:1 Coaching: <https://icma.org/1-1-coaching>
- ✓ League of Women in Government: <http://leagueofwomeningovernment.org>
- ✓ MMANC Women's Leadership Summit:
 - <http://mmanc.org>
 - <http://mmasc.org>
- ✓ Emerging Local Government Leaders (ELGL): <https://elgl.org/>



Paving the Path Forward

“The advancement of women, and quite frankly the advancement of society requires disruption of the social norms around how we are supposed to behave...and what we are supposed to expect from ourselves.”

– Tiffany Dufu; Author – Drop the Ball

• Talk About It & Train, Train, Train!

❖ Sexual Harassment Training

- ✓ AB 1825 (Mandated training for supervisors)
- ✓ AB 1661 (Mandated training for elected officials)
- ✓ AB 1234 (Mandated ethics training for local agency officials and supervisors)

❖ Gender Bias Training

- ✓ Self Awareness is Key
- ✓ Both Men and Women are Bias
- ✓ Understand Gender Stereotypes; Gender Discrimination
- ✓ Talk about It – Have Constructive, Disruptive Conversations

❖ Adopt Gender Equality and Sexual Harassment Policies

- ✓ City of Vancouver, WA: City for All Women: Women's Equity Strategy
 - <https://vancouver.ca/files/cov/womens-equity-strategy-2018.pdf>

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Podcasts & Reading Lists

“Great leaders are not afraid to show great effort and failures. They are constantly taking in new data and experiences and evolving.”

- Samantha Key, SheKnows Media



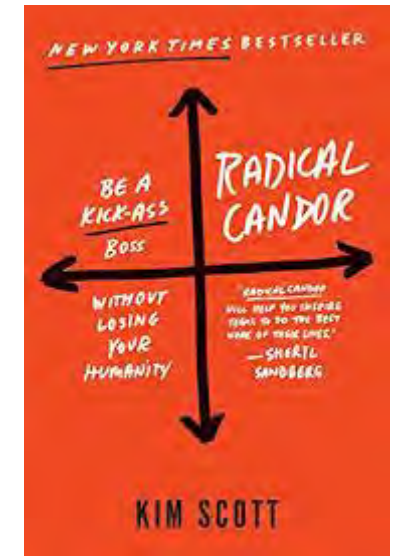
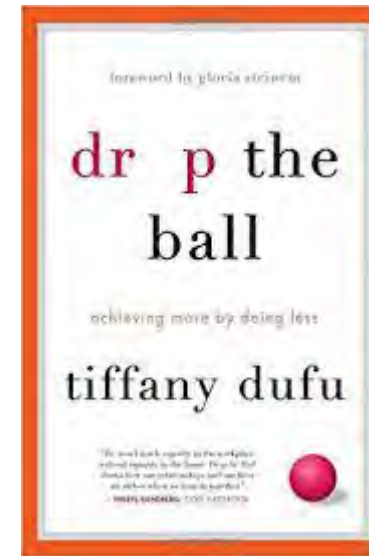
1. *Divided States of Women*, **LIZ PLANK & HITHA HERZOG**: Women are often regarded as a uniform entity, while in fact they represent a diverse set of opinions and experiences. In *Divided States of Women*, hosts Liz Plank and Hitha Herzog challenge the idea of a one-dimensional female perspective, eschewing the pundits in favor of real American women and delving into the complex political issues that they face.
2. *Girlboss Radio*, **SOPHIA AMORUSO**: Just like the boundary-pushing women that it invites to its show, *Girlboss Radio* goes about things a little differently. In each episode, host Sophia Amoruso, who rose to business fame as the founder of Nasty Gal, has no-holds-barred conversations with some of the world's leading ladies. Executives, entrepreneurs, artists, and other trail blazers share how they got to be where they are today, offer candid advice, and dole out insights with a heavy dose of humor.
3. *Smart Creative Women*, **MONICA LEE**: *Smart Creative Women* focuses on just that: Learning from and getting inspired by smart, creative women from a variety of industries. Host Monica Lee invites her guests – and listeners – to pour out a cup of coffee and dish out their best personal and professional advice. Episodes cover everything from harnessing creativity to building a brand to finding pathways to your passion.



Podcasts & Reading Lists

“Great leaders are not afraid to show great effort and failures. They are constantly taking in new data and experiences and evolving.”

- Samantha Key, SheKnows Media



1. *Inclusion: Diversity, the New Workplace and the Will to Change*, **JENNIFER BROWN**: Inclusion embraces the opportunity that true diversity and inclusion presents for any organization. Drawing from time-tested strategies that Jennifer Brown and her team have implemented at Fortune 500 companies, the book — which bills itself as a “call to action” — outlines ways to empower employees and foster better workplace cultures.
2. *Drop the Ball*, **TIFFANY DUFU**: In this reflective autobiography, Dufu — Levo’s chief leadership officer and a launch team member of Lean In — explores how she balances personal and professional needs. Her solution? Letting some of her demands go. Her book offers practical advice that readers can relate to and apply to their own lives.
3. *Radical Candor: Be a Kick-Ass Boss Without Losing Your Humanity*, **KIM SCOTT**: As an executive at Google and Apple, Kim Scott discovered the ideal leadership style: challenge directly and care personally. Radical Candor outlines this management technique and shows bosses how to achieve success without sacrificing their humanity, find professional fulfillment, and foster an empathetic workplace environment.

Sexual Harassment in the Workplace

Kevin Karpinski

Managing Partner

Karpinski, Colaresi & Karp

Suite 1850, 120 E. Baltimore Street

Baltimore, Maryland 21202

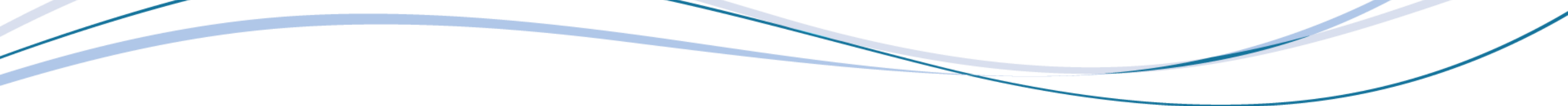
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The Concept of Comparator



PERCEPTION OF FAVORITISM

Examples of Sexual Harassment

- **Sexual innuendos and comments about sexuality.**
- **Asking or commenting about a person's sexuality.**
- **Humor or jokes about sex or females in general.**
- **Pestering a person for dates or sexual behavior.**
- **Touching, patting, pinching, stroking, squeezing, tickling or brushing against a person.**
- **Name calling, such as “honey,” “bitch,” “whore” and “slut.”**
- **Insulting and belittling a person; sexual ridicule.**

Examples of Sexual Harassment

- **Letters, notes, telephone calls or materials of a sexual nature.**
- **Pejorative (sexist or stereotyped) comments about females.**
- **Displaying pictures, calendars, cartoons or other materials with sexual content within the workplace.**
- **Stalking a person both inside and outside the workplace.**
- **Attempted or actual sexual assault.**

SEXUAL HARASSMENT

To prevail on a sexual harassment claim, the employee must prove:

- 1. That the employee was harassed because of his/her gender;**
- 2. That the harassment was unwelcome;**
- 3. That the harassment was sufficiently severe or pervasive to create an abusive environment; and**
- 4. That there is some basis for imputing liability to the employer.**

Criteria for determining whether harassment is severe or pervasive:

- 1. The frequency of discriminatory conduct.**
- 2. Severity of the discriminatory conduct.**
- 3. Whether it is physically threatening or humiliating or a mere offensive utterance.**
- 4. Whether it unreasonably interferes with the employee's work performance.**

Cases Concerning Title VII Sexual Harassment

- ***Faragher v. City of Boca Raton*, 118 S.Ct. 2275 (1998)**
- ***Burlington Industries, Inc. v. Ellerth*, 118 S.Ct. 2257 (1998)**
- ***Pryor v. United Air Lines, Inc.*, 791 F.3d 488, 498 (4th Cir. 2015)**

Faragher v. City of Boca Raton

- **FACTS**

- **From 1985 to 1990, Beth Ann Faragher worked part time and summers as a life guard for the Marine Safety Section of the Parks and Recreation Department of the City of Boca Raton.**
- **Faragher alleged that two of her supervisors had engaged in unwelcome and offensive touching and had made crude and inappropriate remarks regarding her and other female lifeguards.**

- **Faragher never complained to upper management regarding the conduct of her immediate supervisors.**
- **In 1986, Boca Raton enacted a sexual harassment policy but the policy was never disseminated to the Marine Division.**
- **Another lifeguard ultimately complained and the supervisors were disciplined.**

- **Faragher filed suit in the United States District Court for the District of Florida, alleging violation of Title VII of the Civil Rights Act of 1964.**

ISSUE

- **Whether the City of Boca Raton could be held liable under Title VII when the complainant never complained to upper management and upon learning of the conduct, the City of Boca Raton promptly investigated and disciplined the immediate supervisors**

New Standard Developed

- **Aided by the agency relationship**

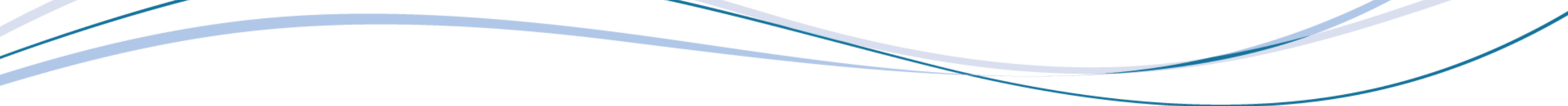
HOLDING

Yes. The City of Boca Raton could be held liable because it could not meet its affirmative defense that a policy was in place to address effectively sexual harassment within the Marine Division.

Burlington Industries, Inc. v. Ellerth

●FACTS

- Kimberly Ellerth worked for Burlington Industries for 15 months as a sales person.**
- Ms. Ellerth worked in a 2-person office in Chicago.**

- 
- **Mr. Slowik was a mid-level manager in New York.**
 - **Ms. Ellerth alleged that Mr. Slowik made remarks about her breasts, told her to loosen up, and warned that he could make her life very difficult.**

- **She also alleged that Mr. Slowik had rubbed her knee and made comments regarding her physique.**
- **During her 15 months of employment, Ms. Ellerth was promoted and suffered no tangible employment loss.**
- **After resigning, Ms. Ellerth complained that she had quit because of Mr. Slowik's behavior.**

- **Burlington had a sexual harassment policy.**
- **Ms. Ellerth did not complain to upper management regarding Slowik's behavior.**

ISSUE

- **Whether Burlington is liable under Title VII of the Civil Rights Act of 1964?**

HOLDING

- **The United States Supreme Court remanded the case to the United States District Court for the District of Florida to allow Burlington the opportunity to prove its affirmative defense that it exercised reasonable care to prevent and correct sexual harassing behavior and that the employee unreasonably failed to take advantage of the preventative and corrective opportunities or otherwise failed to avoid the harm.**

AN EMPLOYER CAN BE LIABLE FOR SEXUAL HARASSMENT BY A COWORKER

- If a coworker harasses an employee, then the employer can be held liable under the theory that the employee was subjected to a hostile work environment. The employer may be liable if:
 - (1) the employer knew or should have known about the harassment;
 - and
 - (2) the employer failed to take effective action to stop it.
- Pryor v. United Air Lines, Inc., 791 F.3d 488, 498 (4th Cir. 2015)

- **If there is harassment by a coworker, the employer may be liable if it has either actual knowledge or constructive knowledge of a hostile work environment created by a coworker’s sexual harassment. Constructive knowledge of harassment “can be imputed to an employer if a reasonable person, intent on complying with Title VII, would have known about the harassment.”**
 - **Ocheltree v. Scollon Prods., Inc., 335 F.3d 325, 334 (4th Cir. 2003)**
- **An employer cannot avoid liability for coworker harassment by adopting a “see no evil, hear no evil” strategy.**
 - **Id.**

- **If the employer knew or should have known about harassment by a coworker, the employer may be liable if the employer “failed to take effective action to stop it by responding with remedial action reasonably calculated to end the harassment.”**
 - **Pryor v. United Air Lines, Inc., 791 F.3d 488, 498 (4th Cir. 2015)**
 - **Freeman v. Dal-Tile Corp., 750 F.3d 413, 423 (4th Cir. 2014).**

- **“Once the employer has notice, then it must respond with remedial action reasonably calculated to end the harassment.”**
 - **Freeman v. Dal-Tile Corp., 750 F.3d 413, 423 (4th Cir. 2014)**
 - **EEOC v. Sunbelt Rentals, Inc., 521 F.3d 306, 319 (4th Cir. 2008).**

- **An employer's negligence also may be established, and it may be held liable for harassment of an employee by a coworker, if the employer failed to provide reasonable procedures for victims of harassment to report complaints.**
 - **Hoyle v. Freightliner, LLC, 650 F.3d 321, 335 (4th Cir. 2011).**

- **An employer's written anti-harassment policy, reasonably calculated to prevent and address workplace harassment, is considered proof that the company exercised reasonable care in preventing and correcting harassment.**
 - Id.

Significant take away points:

- **Need effective sexual harassment policy.**
- **Need to undertake prompt investigation of sexual harassment claims.**
- **Periodic sexual harassment training.**

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