

**Workplace Harassment Prevention Training  
for Members of the Colorado General Assembly  
and Legislative Staff, Aides, and Interns  
2018**



***Respect, Inclusivity, Dignity***

**By: Truhlar and Truhlar, L.L.P.**

# Workplace Harassment Training Content

- I. Statement of Goals and Overview of the Training
- II. Identification of Materials Distributed
- III. Legal Basis to Eliminate Workplace Discrimination and Workplace Harassment
- IV. Detailed Description of the Workplace Harassment Policy of the General Assembly
- V. Types of Discrimination and Harassment with Examples
- VI. Complaint Process, Investigative Procedures, and Confidentiality Issues Discussed
- VII. Questions, Comments, and Stated Concerns

## Meet Your Instructors

**Robert J. Truhlar (Bob).** Born in Chicago, Illinois. Bachelor of Arts Degree (Major Biology, Minor Education) from St. Mary's College, Winona, Minnesota, 1970. Relocated to Colorado in 1970. University of Denver College of Law Juris Doctor Degree 1981. Truhlar and Truhlar, L.L.P., Centennial, Colorado law firm (formerly located in Littleton) formed with spouse, Doris B. Truhlar in 1985. President of the Colorado Bar Association 2003-2004. Listed in Best Lawyers in America under Labor and Employment Law in Colorado since 1989. Recipient, University of Denver Sturm College of Law, Alumni Professionalism Award (with spouse/law partner) in 2003

**Christine E. Breen.** Born in State College, Pennsylvania. Bachelor of Science Degree in Environmental Science and Bachelor of Arts in Philosophy from Southern Methodist University, Dallas, Texas 2007. Masters Degree, Environmental Law and Policy, Vermont Law School, South Royalton, Vermont 2008. Juris Doctor Degree, Vermont Law School, 2011. Veterans Administration Accreditation, 2014.

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## ***Major Benchmarks in the Legal Basis of Sexual Harassment Claims***

Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2 (Title VII) reads as follows:

### **(a) Employer practices**

It shall be an unlawful employment practice for an employer-

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

Section 2000e-3 adds as an unlawful employment practice:

### **(a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings**

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

Originally, Title VII provided the equitable remedies of reinstatement or back pay.

In 1986, the Supreme Court of the United States stated that sexual harassment is a form of sex discrimination which is prohibited by Title VII. In the case of Meritor Savings Bank v. Vinson, 477 U.S. 57(1986) the Court stated that speech in itself can create a hostile environment which violates the law.

In 1991, Congress passed the Civil Rights Act of 1991 which allows plaintiffs with harassment and discrimination claims pursuant to Title VII to request a jury trial and seek compensatory (emotional distress) and punitive damages for the first time, subject to a dollar cap based on the number of employees working for the employer.

In June of 1998, the Supreme Court of the United States issued two decisions which addressed when an employer is liable for sexually harassing acts by a supervisor and by a co-worker. The primary issues were whether an employer knew, or should have known, about the conduct and failed to stop it, and whether an employer exercised reasonable care to prevent sexually harassing behavior. The Court also stated that it is relevant whether an employee takes advantage of any preventive or corrective opportunities under the employer's policy. Burlington Indus. Inc. v. Ellerth, 524 U.S. 742 (1998) and Faragher v. City of Boca Raton, 524 U.S. 775 (1998).

The Colorado Anti-Discrimination Act (CADA) applies to all Colorado governmental entities, except federal agencies and departments. It prohibits employers from discrimination described as follows: "... to refuse to hire, to discharge, to promote or demote, or to harass during the course of employment or to discriminate in matters of compensation, terms, conditions, or privileges of employment..." based on disability, race, creed, color, sex, sexual orientation, religion, age, national origin, or ancestry. Colo. Rev. Stat. § 24-34-402(1)(a).

In 1999, the Colorado legislature amended CADA by adding a strong prohibition against harassment by stating: " 'harass' means to create a hostile work environment based upon an individual's race, national origin, sex, sexual orientation, disability, age, or religion. Notwithstanding the provisions of this paragraph (a), harassment is not an illegal act unless a complaint is filed with the appropriate authority at the complainant's workplace and such authority fails to initiate a reasonable investigation of a complaint and take prompt remedial action if appropriate." Colo. Rev. Stat. § 24-34-402(1)(a).

CADA includes a no retaliation provision: "To discriminate against any person because such person has opposed any practice made a discriminatory or an unfair employment practice by this part 4, because he has filed a charge with the commission, or because he has testified, assisted, or participated in any manner in an investigation, proceeding, or hearing conducted pursuant to parts 3 and 4 of this article;"

In 2013, the Job Protection and Civil Rights Enforcement Act of 2013 added new remedies to claimants for claims occurring on or after January 1, 2015.

### **Joint Rule 38. Workplace Harassment Policy**

(a) ***Workplace harassment policy of the General Assembly.*** It is the General Assembly's policy to create and maintain a work environment in which all members, legislative employees, and third parties are treated with dignity and respect. Members, legislative employees, and third parties have the right to a workplace that is free from harassment, both subtle and overt. Therefore, the General Assembly strives to prevent and eliminate harassing behavior, and the recurrence of harassing behavior, based on disability, race, creed, color, sex, sexual orientation, religion, age forty and older, national origin, military status, genetic information, or ancestry which members, legislative employees, and third parties may encounter in the course of their work.

(a.5) ***Workplace harassment – definition.*** "Workplace harassment" means any harassment based on disability, race, creed, color, sex, sexual orientation, religion, age forty and older, national origin, military status, genetic information, or ancestry, including verbal or physical behavior or conduct, that denigrates or shows hostility or aversion toward an individual because of that individual's disability, race, creed, color, sex, sexual orientation, religion, age forty and older, national origin, military status, genetic information, or ancestry or that has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment. While "workplace harassment" includes sexual harassment, sexual harassment raises issues that are to some extent unique in comparison to other types of workplace harassment. Therefore, sexual harassment warrants separate emphasis and is further described in subsection (b) of this Joint Rule.

#### **(b) *Sexual harassment.***

(1) For purposes of this Joint Rule, unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

(A) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

(B) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

(C) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(2) In the course of implementation of the General Assembly's workplace harassment

policy, the description of sexual harassment contained in paragraph (1) of this subsection (b) and in the written statement prepared pursuant to subsection (c) (1) of this joint rule shall be subject to revision as necessary to conform with the most recent state or federal statutes or case law defining sexual harassment.

**(c) *Statement implementing the workplace harassment policy of the General Assembly.***

(1) The staff directors of the Legislative Council, the Office of Legislative Legal Services, and the Joint Budget Committee, the State Auditor, the secretary of the Senate, and the chief clerk of the House of Representatives jointly shall prepare a written statement implementing the workplace harassment policy of the General Assembly set forth in subsection (a) of this Joint Rule and containing the definition of workplace harassment in subsection (a.5) of this Joint Rule. Such statement must be in the form of an employment or personnel policy. Such statement must be applicable to all legislative employees of the agencies or house not subject to the state personnel system, each member of the General Assembly, and third parties. Such statement must be submitted for approval to the Executive Committee of the Legislative Council and, following such approval, must also be included in each agency's personnel manual or equivalent document.

(2) Such statement must also include a specific description of sexual harassment and examples of written, verbal, visual, and physical conduct which may constitute sexual harassment, including but not limited to, examples of the kind of behavior that creates a hostile environment based on sexual harassment.

(3) Such statement must provide that no person will be subject to retaliation for having complained of workplace harassment or for having assisted or participated in an investigation of alleged workplace harassment.

**(d) *Implementation of policy – complaint procedure.***

(1) The statement implementing the workplace harassment policy of the General Assembly must provide for the resolution of workplace harassment complaints as follows:

(A) A legislative employee, member, or third party with a workplace harassment complaint may notify that person's contact person. The contact person shall investigate the complaint by interviewing the complainant, the person or persons accused, and any witnesses and by considering all of the circumstances surrounding the alleged incident or incidents which form the basis of the complaint. After this investigation and after appropriate consultation, if necessary, the contact person may resolve the complaint.

Resolution may include disciplinary action when appropriate.

(B) Notwithstanding subparagraph (A) of this paragraph (1) , a legislative employee with a workplace harassment complaint may file a charge of discrimination with the United States Equal Employment Opportunity Commission or the Colorado Civil Rights Division as provided by law.

(e) **Record-keeping.** The statement implementing the workplace harassment policy of the General Assembly must include appropriate record-keeping requirements, including, but not limited to, a provision that complaints of workplace harassment will be investigated and information shared with those having a need to know and in accordance with the law.

(f) **Training.** Persons responsible for implementing the workplace harassment policy of the General Assembly shall receive sufficient training to discharge their duties. The General Assembly shall provide training opportunities for members. In addition, such training shall be provided in the course of orientation of newly elected members.

(g) **Definitions.** As used in this Joint Rule:

(1) "Legislative employee" means an employee of the Legislative Council, the Office of Legislative Legal Services, the Joint Budget Committee, the State Auditor, the Senate, or the House of Representatives, or any legislative aide to a member, legislative intern, or volunteer staff.

(2) "Contact person" means:

(A) The director of Legislative Council, or the director's designee of the opposite gender, for legislative employees of that office;

(B) The director of the Office of Legislative Legal Services, or the director's designee of the opposite gender, for legislative employees of that office;

(C) The staff director of the Joint Budget Committee, or the staff director's designee of the opposite gender, for legislative employees of that office;

(D) The State Auditor, or the State Auditor's designee of the opposite gender, for legislative employees of that office that are not in the state personnel system;

(E) The secretary of the Senate, or the secretary's designee of the opposite gender, for legislative employees of the Senate;

(F) The chief clerk of the House of Representatives, or the chief clerk's designee of the opposite gender, for legislative employees of the House of Representatives; or

(G) Either the President of the Senate, or the President's designee of the opposite gender, or the Speaker of the House of Representatives, or the Speaker's designee of the opposite gender, for members, third parties, and any other person with a complaint.

(3) "Third parties" means newsmen, lobbyists, and members of the general public who have business at the state capitol or who are doing business with legislative service agencies, the Senate, or the House of Representatives.



# **Workplace Harassment Policy of The General Assembly<sup>1</sup>**

Prepared by the Office of Legislative Legal Services

## **A. WORKPLACE HARASSMENT POLICY STATEMENT**

1. Pursuant to the workplace harassment policy contained in Joint Rule 38, it is the policy of the General Assembly to create and maintain a work environment in which all members of the General Assembly, legislative employees, and third parties are treated with dignity and respect. Members, legislative employees, and third parties have the right to a workplace that is free from harassment, both subtle and overt. Therefore, the General Assembly will strive to eliminate harassing behavior based on disability, race, creed, color, sex, sexual orientation, religion, age forty and older, national origin, military status, genetic information, or ancestry which members, legislative employees, and third parties may encounter in the course of their work.

## **B. APPLICABILITY**

1. This Policy is applicable to all legislative employees who are not subject to the state personnel system, each member of the General Assembly, and third parties.

## **C. DEFINITIONS**

1. As used in this Policy:
  - a. "Contact person" means:
    - I. The director of Legislative Council, or the director's designee of the opposite gender, for legislative employees of that office;
    - II. The director of the Office of Legislative Legal Services, or the director's designee of the opposite gender, for legislative employees of that office;

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<sup>1</sup> Also see the following legislative rule regarding the Workplace Harassment Policy of the General Assembly: Joint Rule 38: Workplace Harassment Policy.

- III. The staff director of the Joint Budget Committee, or the staff director's designee of the opposite gender, for legislative employees of that office;
  - IV. The State Auditor, or the State Auditor's designee of the opposite gender, for legislative employees of that office who are not in the state personnel system;
  - V. The secretary of the Senate, or the secretary's designee of the opposite gender, for legislative employees of the Senate;
  - VI. The chief clerk of the House of Representatives, or the chief clerk's designee of the opposite gender, for legislative employees of the House of Representatives;
  - VII. Either the President of the Senate, or the President's designee of the opposite gender, or the Speaker of the House of Representatives, or the Speaker's designee of the opposite gender, for members, third parties, and any other persons with a complaint; or
  - VIII. In addition to a designee described in subparagraphs I. through VII. of this paragraph a., a person of the same gender designated at the discretion of a legislative service agency director, the State Auditor, the secretary of the Senate, or the chief clerk of the House of Representatives for legislative employees of their respective offices or chamber, or at the discretion of the President of the Senate or the Speaker of the House of Representatives for members, third parties, and any other persons with a complaint.
- b. "Legislative employee" means an employee of the Legislative Council, the Office of Legislative Legal Services, the Joint Budget Committee, the State Auditor, the Senate, or the House of Representatives, including any legislative aide to a member. For purposes of this Policy, "legislative employee" also includes a legislative intern and volunteer staff.
  - c. "Member" means a member of the General Assembly.
  - d. "Third party" means a newsperson, lobbyist, and member of the general public who has business at the state capitol or who is doing business with legislative service agencies, the Senate, or the House of Representatives.

- e. "Workplace harassment" means any harassment based on disability, race, creed, color, sex, sexual orientation, religion, age forty and older, national origin, military status, genetic information, or ancestry, including verbal or physical behavior or conduct, that denigrates or shows hostility or aversion toward an individual because of that individual's disability, race, creed, color, sex, sexual orientation, religion, age forty and older, national origin, military status, genetic information, or ancestry or that has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment. While "workplace harassment" includes sexual harassment, sexual harassment raises issues that are to some extent unique in comparison to other types of workplace harassment. Therefore, sexual harassment warrants separate emphasis and is further described in sections D. and E. of this Policy.

#### D. SEXUAL HARASSMENT

- 1. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:
  - a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
  - b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
  - c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

#### E. EXAMPLES OF SEXUAL HARASSMENT

- 1. The following are examples of conduct or communication which may constitute sexual harassment:
  - a. **VERBAL:**
    - I. Sexual comments or innuendos about one's clothing, body, or sexual activity.

- II. Discussing sexual topics in the workplace, such as sexual practices or preferences or telling sexual jokes or stories.
- III. Requesting or demanding sexual favors or suggesting that there is any connection between sexual behavior and any term or condition of employment, whether that connection be positive or negative.
- IV. Using sexual words or phrases.

b. **NONVERBAL:**

- I. Displaying sexually explicit pictures or objects in the work area.
- II. Giving personal gifts of a sexual nature.
- III. Making sexually suggestive gestures.
- IV. Making unwelcome visits to a member's, legislative employee's, or third party's home or hotel room.
- V. Displaying cartoons or sending e-mails, text messages, instant messages, or notes any of which contain sexual pictures, words, or phrases.

c. **PHYSICAL:**

- I. Kissing of a member, legislative employee, or third party, unless the kissing is a customary demonstration of affection, is clearly not objected to, and is made in connection with a greeting or parting, such as a "peck" on the cheek.
- II. Patting, pinching, or intentionally brushing against a member's, legislative employee's, or third party's body.
- III. Sexual contact, intercourse, or assault.

2. The examples in paragraph 1. are illustrative of the communications and conduct that may constitute sexual harassment if unwelcome and depending upon the totality of the circumstances. In that regard, the following should be kept in mind:

- I. A single incident may or may not constitute sexual harassment.
- II. Whether a particular action is sexual harassment will depend on the facts and determinations will be made on a case-by-case basis.
- III. Conduct or communications that might be welcome to one person may be unwelcome to another person. Conduct or communications that might have been welcome between two individuals at one time may become unwelcome at a later time.
- IV. Other conduct or a communication not expressly described in the examples, but which is substantially similar to the examples, may be violative of this policy.

#### F. COMPLAINTS REGARDING WORKPLACE HARASSMENT

1. A member, legislative employee, or third party who believes he or she is the subject of any type of workplace harassment in any manner from anyone, should submit a complaint directly to the appropriate contact person. The complainant may submit the complaint to either gender contact person. The complaint should specifically describe the incident or incidents. The contact person who receives the complaint shall investigate the complaint as promptly and confidentially as practicable by interviewing the complainant, the person accused, and any witnesses or co-workers, and by considering the circumstances surrounding the alleged incident or incidents which form the basis of the complaint.
2. The contact person may gather the following facts in such an investigation from the complainant, the person accused, and any witnesses or co-workers:
  - a. **From the complainant:**
    - I. A description of the incident or incidents including where and when the incident or incidents took place.
    - II. Whether a similar incident or incidents has or have happened before.
    - III. An explanation of how the incident or incidents affected the complainant's work.

- IV. A description of the complainant's reaction to the incident or incidents.
  - V. Whether there were any witnesses to the facts surrounding the incident or incidents or any other evidence of its occurrence.
- b. **From the person accused:**
- I. An explanation of the facts surrounding the complainant's allegations and a request for a response.
  - II. Any reason why the complainant might be fabricating the complaint.
  - III. Whether there were any witnesses to the incident or incidents or any other evidence surrounding the complaint.
- c. **From witnesses or co-workers:**
- I. What they observed.
  - II. How they reacted to the facts surrounding the incident.
  - III. What the complainant or the person accused of workplace harassment told them.
3. Nothing in paragraph b. of subsection 2. of this section F., or any other provision of this Policy, requires any person accused of workplace harassment to involuntarily provide, either orally or in writing, any facts, information, or evidence in response to an investigation of a complaint or to involuntarily sign a written statement or confession.
4. Following the investigation and, after any appropriate consultation, the contact person may resolve the complaint pursuant to section I. of this Policy. The contact person shall make records of the complaint maintained by the contact person available to the person accused of workplace harassment. (See section H. of this Policy) The contact person shall inform both the complainant and the person accused of the outcome of the investigation. Resolution may include disciplinary action when appropriate.
5. Under some circumstances, an outside individual or entity, such as the Mountain States Employers Council or other credible group, may be used to

investigate the complaint and to make recommendations. In such circumstances, the contact person may provide information related to the complaint to the outside individual or entity conducting the investigation.

#### G. RETALIATION PROHIBITED

1. No person will be subject to retaliation for having complained of workplace harassment or for having assisted or participated in an investigation of alleged workplace harassment. Any person who believes that he or she may have been the subject of retaliation for having complained of workplace harassment or for having assisted or participated in an investigation related to an allegation of workplace harassment should report that information to the appropriate contact person.

#### H. RECORDKEEPING

1. Complaints of workplace harassment will be investigated and handled as information shared with those having a need to know and in accordance with the law as follows:
  - a. When a workplace harassment complaint is made, the contact person shall create a separate file under the complainant's name. The contact person shall place all written documentation arising from the complaint in the file including, but not limited to the following: The complaint, if it is in writing; the contact person's or other investigator's investigatory notes, information, and other writings; witness statements; and the disposition, if any, of the complaint. Except as otherwise specifically stated in this Policy, the contact person shall keep the records in the workplace harassment file confidential.
  - b. Section 24-72-204 (3)(a)(X), C.R.S., applies to records maintained of sexual harassment complaints under this Policy. Specifically, it provides that:
    - I. Any records of sexual harassment complaints and investigations maintained pursuant to Joint Rule 38 are not subject to public inspection.
    - II. Disclosure of the records of the complaint and the investigation to a "person in interest", which includes the complainant and the person accused, is permissible .

- III. A person accused of sexual harassment may make records kept pursuant to this Policy available for public inspection in order to support the contention that an allegation of sexual harassment against that person is false.

#### I. RESOLUTION OF A WORKPLACE HARASSMENT COMPLAINT

1. If the contact person determines that this Policy has been violated, appropriate disciplinary action will follow. As a general rule, remedies will be assessed proportionate to the seriousness of the violation. For legislative employees, this may include an apology, direction to stop the offensive conduct, counseling or training, oral warning, written warning, or termination. If the contact person determines that a member of the General Assembly has violated this Policy, the contact person shall inform leadership of the respective body which shall, in turn, handle the disciplinary action, if any, according to the rules of the appropriate house of the General Assembly.
2. The appropriate contact person will handle the resolution of complaints involving legislative employees. If a member is involved in a complaint situation, the contact person may discuss resolution directly with the member or take the matter to leadership of the respective body, depending on the circumstances; however, only leadership may handle any disciplinary action involving a member. If a third party is involved, the contact person shall handle the complaints and the resolution thereof.
3. If the workplace harassment recurs after a complaint is made, the complainant should immediately bring the matter to the attention of the appropriate contact person.

#### J. FALSE COMPLAINTS

1. Complaints of workplace harassment that are found to be intentionally or recklessly dishonest or malicious will not be tolerated.



**Who do I contact if I believe I have been/ am being harassed as per  
the Workplace Harassment Policy?**

- V. The Secretary of the Senate is **Effie Ameen**. Her male designee is **Max Majors** (Assistant Secretary).
- VI. The Chief Clerk of the House is **Marilyn Eddins**. Her male designee is **Robin Jones** (Assistant Chief Clerk).
- VII. The President of the Senate is **President Kevin Grantham**. His female designee is **Senator Beth Martinez Humenik**.
- VIII. The Speaker of the House is **Speaker Crisanta Duran**. Her male designee is **Representative Alec Garnett**.

See: Workplace Harassment Policy, Section C(1)(a)

## **Questions?**

**Your question(s) may be submitted anonymously. If this is your desire, please do not write your name on this form.**

**If you would like to discuss your question(s) in private, please provide your name and a contact telephone number below. Someone from Truhlar and Truhlar, L.L.P. will contact you after the training session.**

1. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Name

\_\_\_\_\_  
Telephone Number

## **Workplace Harassment Prevention Training Evaluation Survey**

**Are you: A Legislator ☐ or a Non-Legislator (staff or intern) ☐**

**Please rate the following on a scale of 1 to 5, where 1 is strongly disagree and 5 is strongly agree.**

1. The Workplace Harassment Prevention Training was informative.  
1      2      3      4      5      COMMENTS: \_\_\_\_\_

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2. The trainers were knowledgeable on the subjects.  
1      2      3      4      5      COMMENTS: \_\_\_\_\_

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3. The space in which the training session was held was comfortable.  
1      2      3      4      5      COMMENTS: \_\_\_\_\_

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4. My questions were answered satisfactorily.  
1      2      3      4      5      COMMENTS: \_\_\_\_\_

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5. The materials handed out at the session were useful.  
1      2      3      4      5      COMMENTS: \_\_\_\_\_

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Additional comments: \_\_\_\_\_

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**Thank you for your participation in the Workplace Harassment Prevention Training!**