

Workplace Harassment



Nebraska Equal Opportunity Commission

Presented by
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Illegal Discrimination



Showing prejudice in the treatment of
others based on their
“protected class”

Prejudice is shown when people respond to different races, ethnicities, cultures, religious beliefs, age, physical & mental abilities, and gender differences with negativity or stereotypes, based on assumptions.



“1 In 6”

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Some **assumptions** we are familiar with...

1. People in wheelchairs should.....
2. Women really don't....
3. People over 65 can't...
4. People who don't speak English shouldn't...
5. Tall people are so...
6. African Americans usually...
7. Why can't Mexicans...
8. If poor people could just...
9. People with lots of kids...
10. Rich people are...
11. I heard Muslims...

What is wrong with these statements? Have our concepts changed and **why?**

1. Mrs. Jones looks remarkably good **for someone her age.**
2. We need more **manpower** here.
3. I see Sally forgot to sign her timecard. **She** must be having a **blonde day.**
4. Even though he is confined to a wheelchair, Jim **manages** to live a productive life.
5. There is a daycare at the work location, **where women can leave their children** while they work.
6. We welcome all **managers, their wives,** and their children.
7. “All **men** are created equal.”
8. “To boldly go where no **man** has gone before.”

Did the person intend to be hurtful? Insensitive?

**Discrimination can be intentional or
unintentional but the
effects**

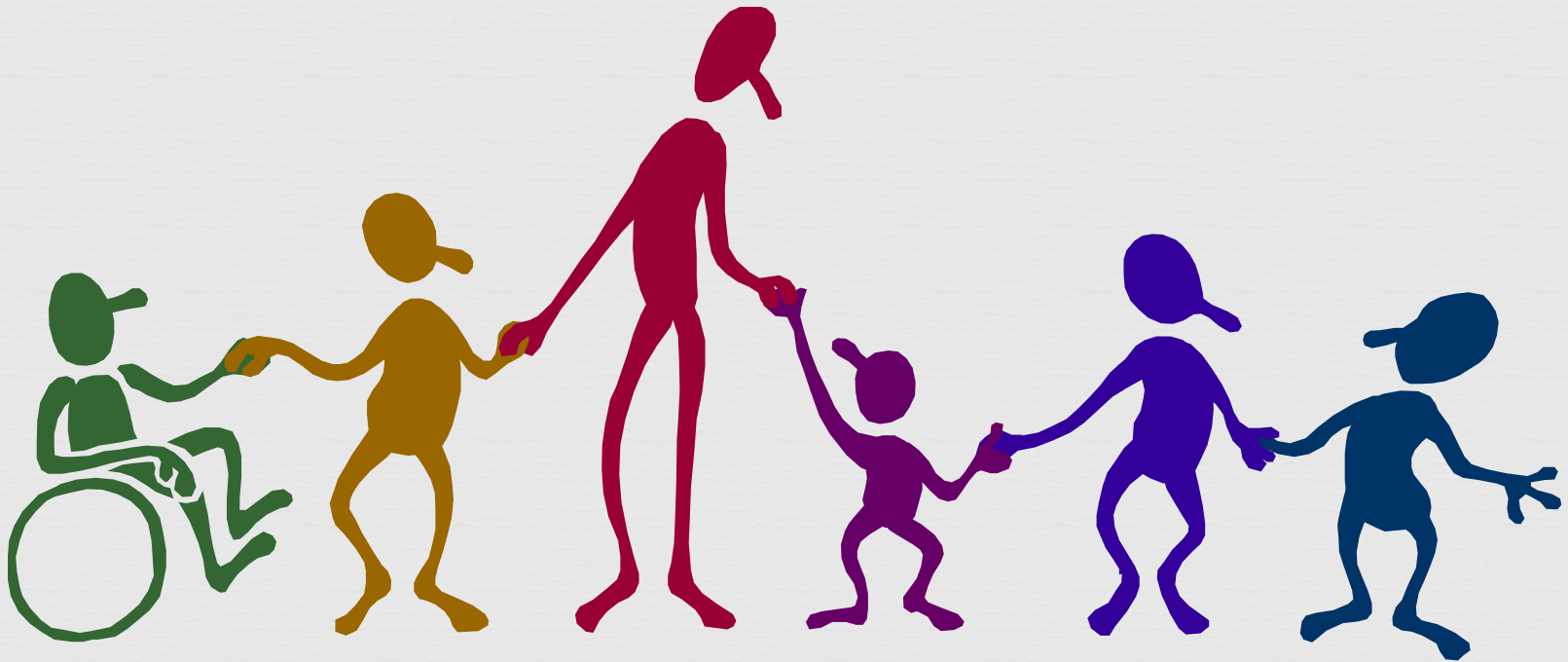


**of discrimination are painful
and can last forever.**

People are subjected to harassment because of a group they are identified with, or their protected class membership:

- ✦ Birthplace, ancestry, cultural, or linguistic characteristics related to a protected class
- ✦ Association/affiliation/friendship with someone in a particular protected class
- ✦ Attendance or participation in schools, churches, temples, or mosques associated with a protected class
- ✦ Surname identified with a protected class.

What are the “**protected classes**”
under discrimination law?



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National Origin includes, but not limited to:

Hispanics-All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture without regard to race.

Asian or Pacific Islander-all persons of the Far East, Southeast Asia, the Indian Sub-Continent, or the Pacific Islands. Included: China, Japan, Korea, the Philippine Islands, and Samoa.

American Indian or Alaskan Native-all persons having origins in any of the original people of North America.

Race includes, but not limited to...

All White people having origins in Europe, Northern Africa, or the Middle East, who are not Hispanic. All Black people having origins in any of the Black racial groups of Africa, but who are not of Hispanic origin.

Color

There are different colors even within racial groups, and a person may believe they have been treated unfairly because of the color of their skin.

Religion

Showing a preference for or against a religious group, or showing intolerance for that group's observation of their religious practices, dietary habits, or work schedules.

Sex

Sex discrimination is gender discrimination, and both women and men may experience discrimination , including **sexual harassment**.

Age - Anyone age 40 and over

Marital Status - Under employment law only: married or single.

Familial Status - Under housing law only: any family with minor children

Disability -



A person with a disability (under the ADAAA) has a physical or mental impairment that substantially limits one or more of their major life activities; a person who has a record of such an impairment; a person who is regarded as having such an impairment.

HOW TO IDENTIFY HARASSMENT...



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Harassment is conduct that is:

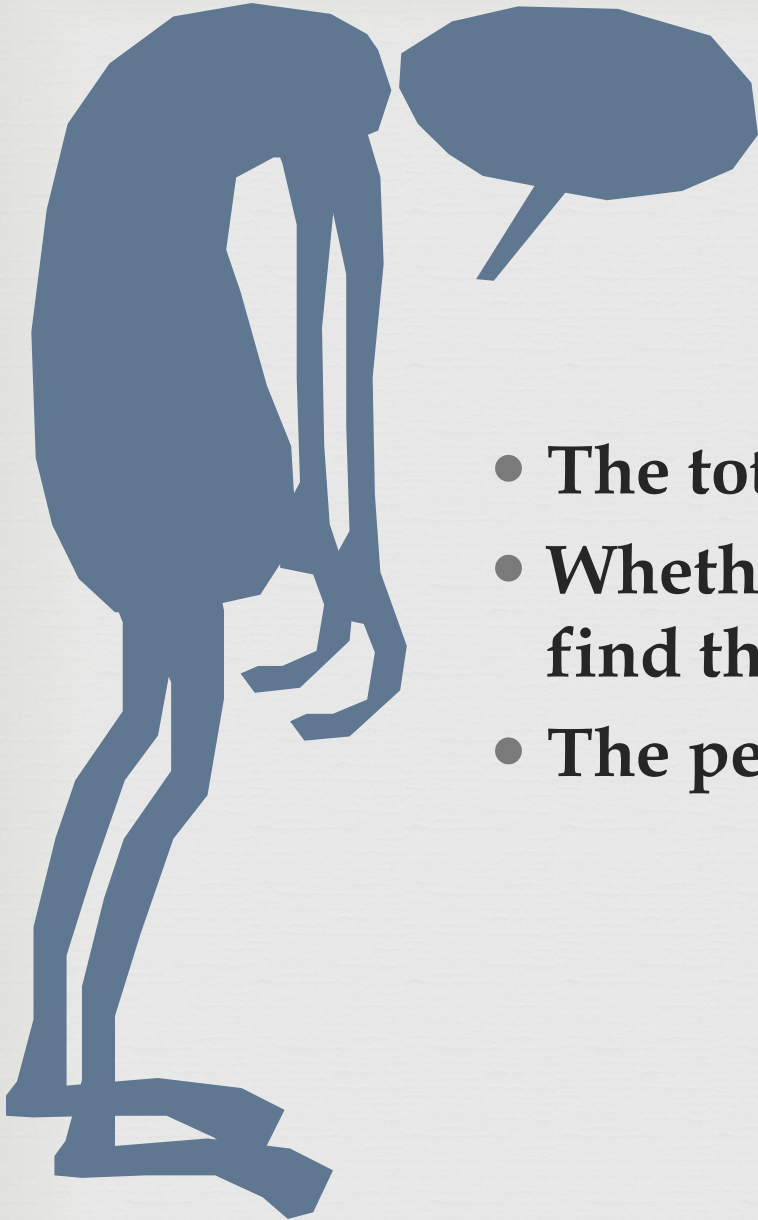
Disregard and Disrespect for
Human Dignity

Illegal Discrimination when
based on a person's
protected class membership

A perpetrator of harassment

Has a bias based on a stereotype or an individual belief or opinion

- Shows prejudice against a particular person or class of persons
- Treats others with disrespect based on an immutable trait



Is it harassment? CONSIDER...

- The totality of circumstances
- Whether a *reasonable person would find the behavior objectionable
- The perception of the victim

The conduct must be sufficiently

severe or pervasive

to be actionable under discrimination law

Severe means egregious just one time



Pervasive means occurring frequently

Unwelcome conduct is not consensual



It may set off an alarm



It is **inappropriate conduct**
when it is
verbal, or physical, or visual,
or any combination of these

Verbal

- Swear Words or Profanity
- Name-calling that refers to someone's protected class status
- Any derogatory slurs, comments, or insults

PHYSICAL

- Pushing, impeding, or blocking someone's movements
- Unwanted touching, assaults
- Throwing objects
- Giving backrubs

Visual

- Derogatory posters, pictures, cartoons, drawings, graphic materials, objects
- Suggestive gestures
- Glaring

Examples

- ∞ Discussing sexual activities
- ∞ Telling off-color jokes
- ∞ Unnecessary touching



Commenting on physical attributes

Displaying suggestive pictures

Using demeaning terms

**Discussing someone's race
or religion or national origin
in a negative way**



Using indecent gestures

Sabotaging the victim's comfort or performance

Engaging in hostile provocation



**Granting favors to
participants in
consensual but
prohibited
conduct**

**Using crude and
offensive language
in the presence of
others or allowing
the language to be
used**



In AGE – based harassment, there are themes of remarks, behaviors, and opinions that are reflective of stereotypical and discriminatory views, such as:

1. “We need some new blood in this company.”
2. “You can’t teach an old dog new tricks.”
3. “We have laid-off most of our employees reaching retirement age. That should save us some money on our medical insurance.”



Many studies have shown that older workers have lower absentee rates and more job stability and tenure.

The perpetrator may be a
coworker, manager, vendor,
... *any* workplace contact



**The victim does not
have to be the
person who is the
victim of the
unwelcome conduct,
but could be
someone who is
offended by the
conduct**



The victim and the harasser *do not* have to be of a different protected class membership



Oncale v. Sundowner Offshore Services 523
U.S. 75, 118 S.Ct. 998,
[72 EPD (CCH) ¶45,175]

Same-sex harassment is
recognized under Title VII

**It is illegal harassment when
the unwelcome conduct is
based on the person's
protected class membership**

**It is harassment
when others join
in, or are aware
and do not
prevent/stop it**

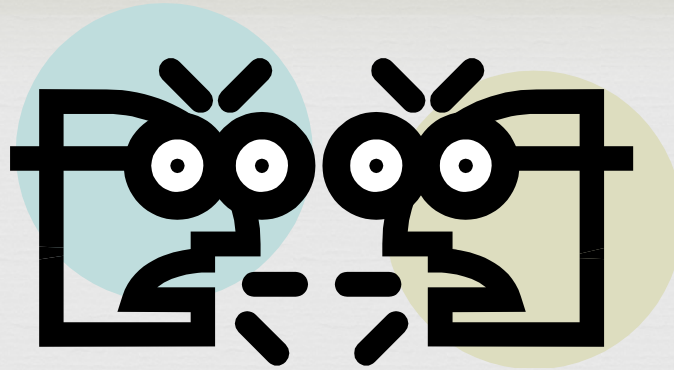


***Note: The responsibility for prevention
and action is different between supervisors
and non-supervisory employees.**

Negative Behavior:

- ☞ Talking at a person
- ☞ Belittling
- ☞ Ignoring
- ☞ Cutting someone short
- ☞ Condescending
- ☞ Discounting a person's intelligence or knowledge





definition:

“Hostile Environment”

A work environment created by a
workplace contact

(including a supervisor)

who does not impact tangible terms and
conditions of employment



definition

“Quid Pro Quo”

Unwelcome
behavior by
**someone who
has authority or
power to control
or make
decisions**

Who impacts tangible terms and conditions of employment:

**hiring, promotion, demotion, discipline/termination, compensation,
work assignments**

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Meritor Savings Bank v. Vinson

477 U.S. 57, 106 S.Ct. 2399

[40 EPD (CCH) ¶36,159} (1986)

The U.S. Supreme Court held that Vinson had been subjected to sexual harassment by the supervisor, and this harassment also constituted a “hostile environment”.

If not opposed, it may affect:



- ❧ VALUED EMPLOYEES
- ❧ PRODUCTIVITY
- ❧ MORALE
- ❧ SALES AND PROFITS
- ❧ CLIENTS, CUSTOMERS
- ❧ LEGAL FEES
- ❧ GOODWILL AND REPUTATION

RETALIATION



Discrimination against a person who has opposed an illegal practice or participated in an investigation

Overview of Retaliation

The law prohibits retaliation against someone who complains or has participated in an investigation, and covers:

- ∞ Current workplace contact
- ∞ A perspective workplace contact
- ∞ A former workplace contact



Types of Retaliation by Employers

1. Threat to file a counterclaim in court
2. Suspension with pay
3. Changing the qualifications for an open position sought
4. Selective strict enforcement of a policy
5. Harassment
6. Reprimands
7. Extending Probation
8. Transfer to a lower grade or salary
9. Intimidation of witnesses during an internal investigation of a complaint

What should a victim of harassment do?

Clearly communicate that the behavior is offensive or unwelcome.



The courts have established that an employer is liable if negligent in failing to prevent harassment from taking place.

When.....

1. Employer does not monitor the workplace
2. Employer failed to respond to complaints
3. Employer failed to provide a system for registering complaints
4. Employer discouraged complaints from being filed.



**Periodically read the
policies that address
filing an internal
complaint.**

1. Document : keep records, notes, emails, etc. of concerns or complaints
2. Complain to another member of management if the perpetrator is the immediate supervisor
3. Be honest in the details of what occurred by date, location, description, and witnesses
4. Remember the “Yes, but...” test



**Expect immediate
and appropriate
remedial action
to resolve the
complaint, if
warranted.**



Everyone by
birthright is
entitled to

Human Rights

**People residing in
this country are
covered by its laws.**

Working in a Diverse Community

Practice kindness

Help to resolve conflicts



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- **Recognize similarities and differences in individuals within groups.**
- **Acknowledge your own biases and prejudices. We all have them.**
- **Let go of stereotypes.**
- **Learn from others.**
- **Yield to respect, acceptance, and inclusiveness instead of insulting and contentious behavior.**



Value and respect diversity



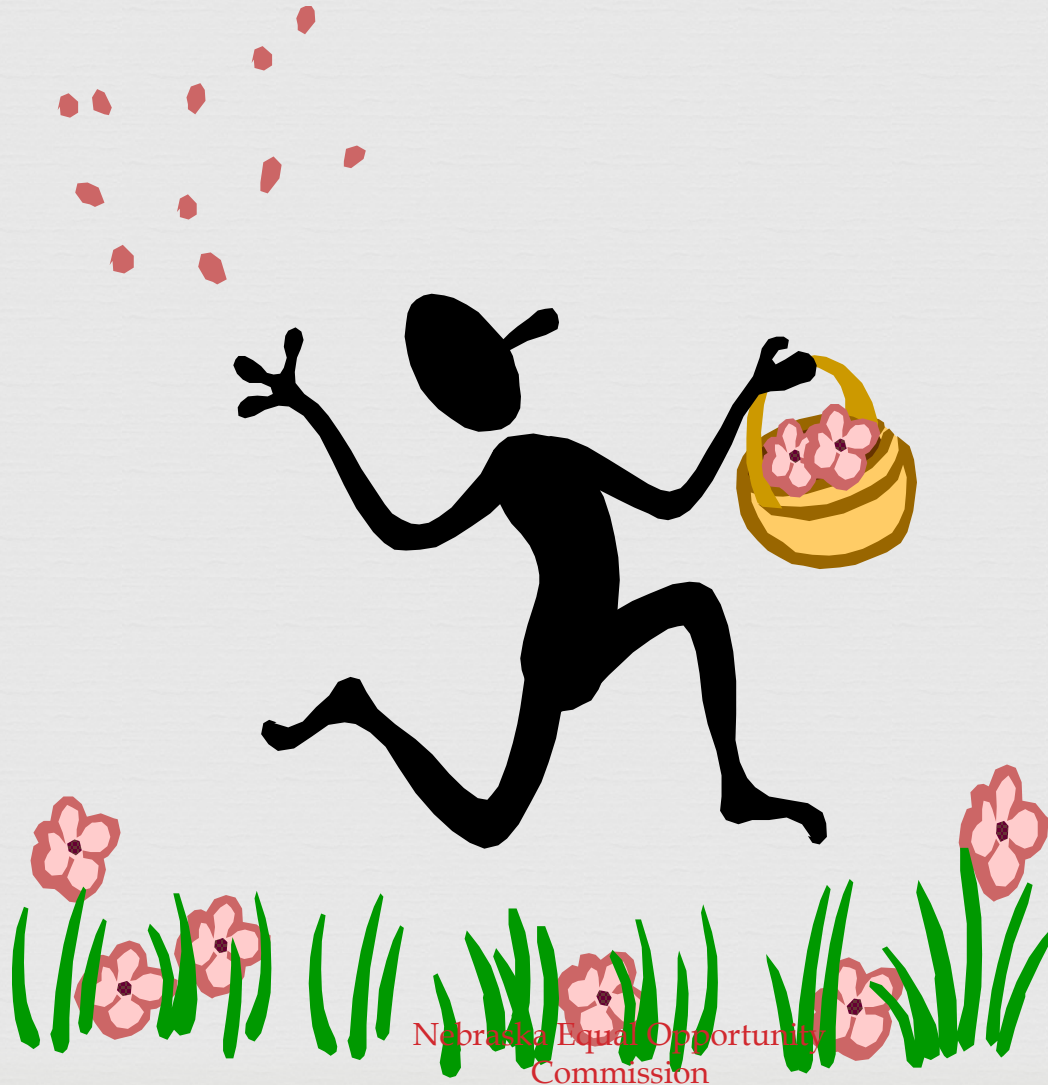
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Tell your family and
others that you value and
respect diversity



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Be the example



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Walk the talk and
implement/enforce/follow
policies, rules and practices that
hold all persons accountable for
inappropriate behavior.

It takes only one person

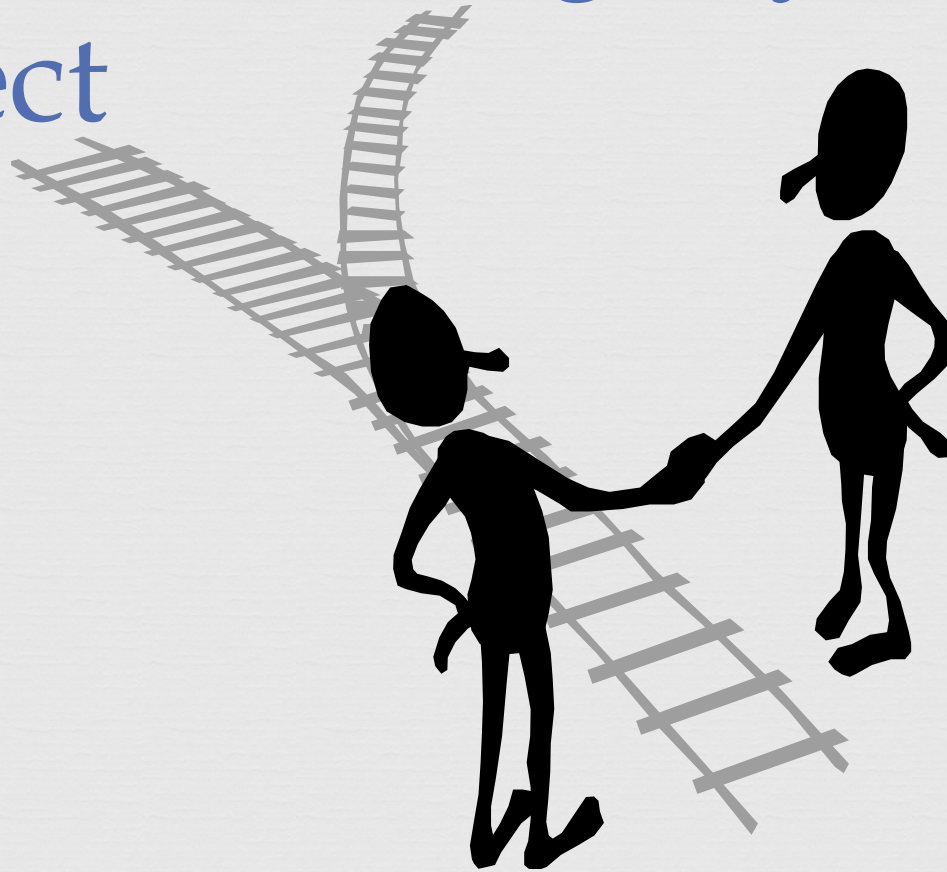


Treat all people fairly



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All people want to be
treated with dignity and
respect



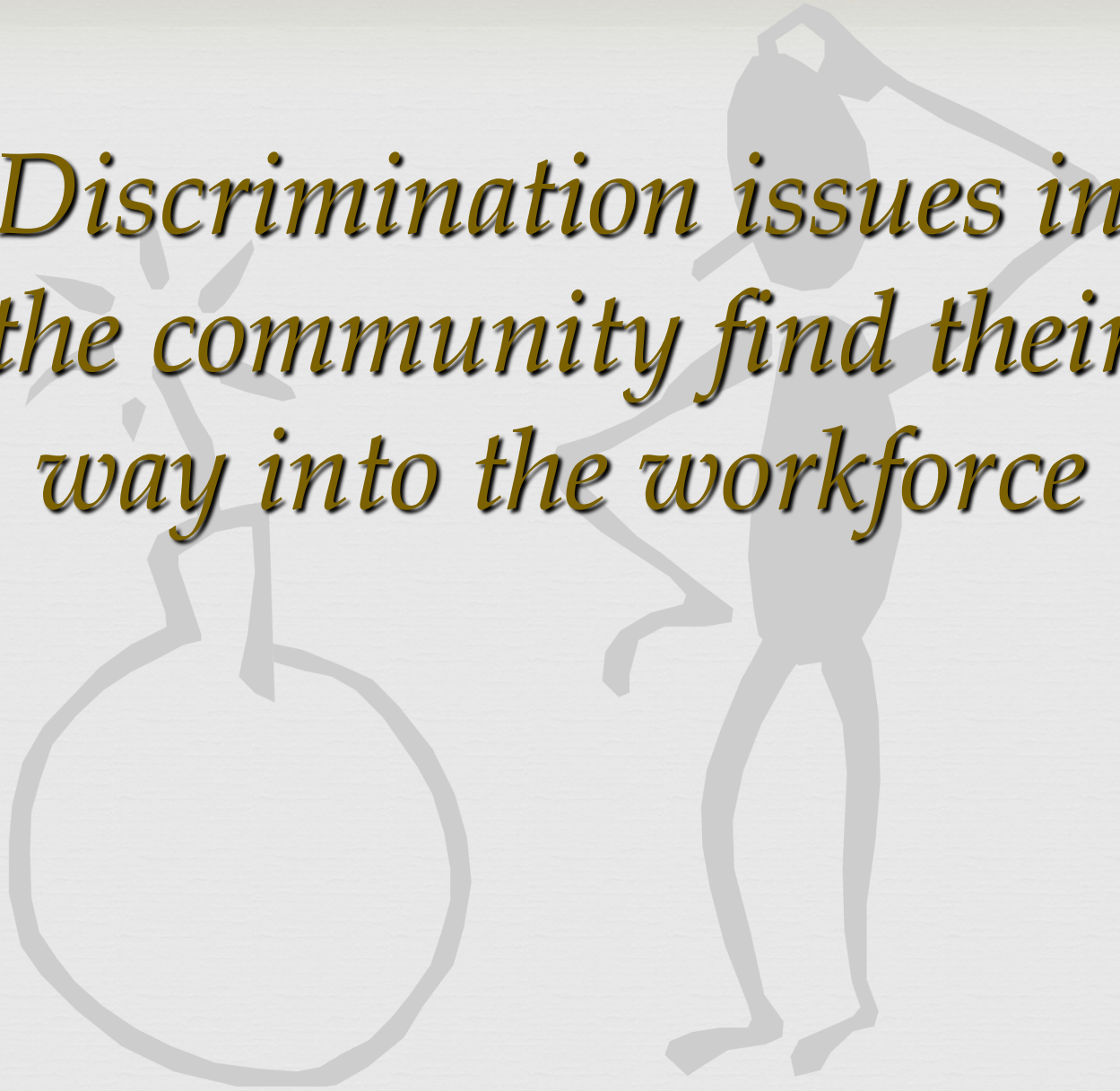
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People are
individuals

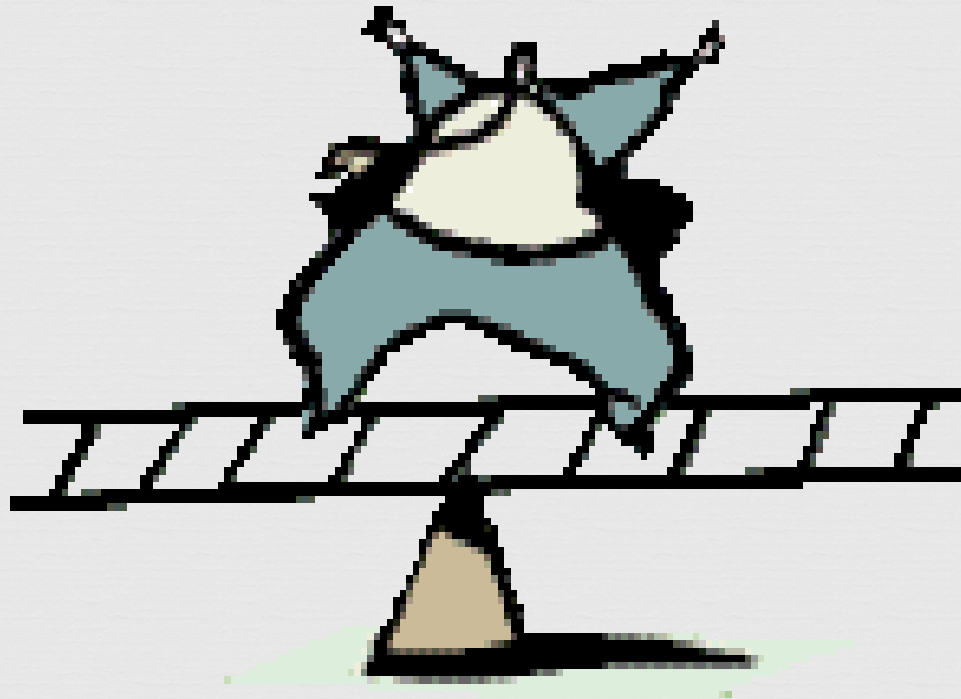
but more often
than not, share
values, beliefs,
and social
culture



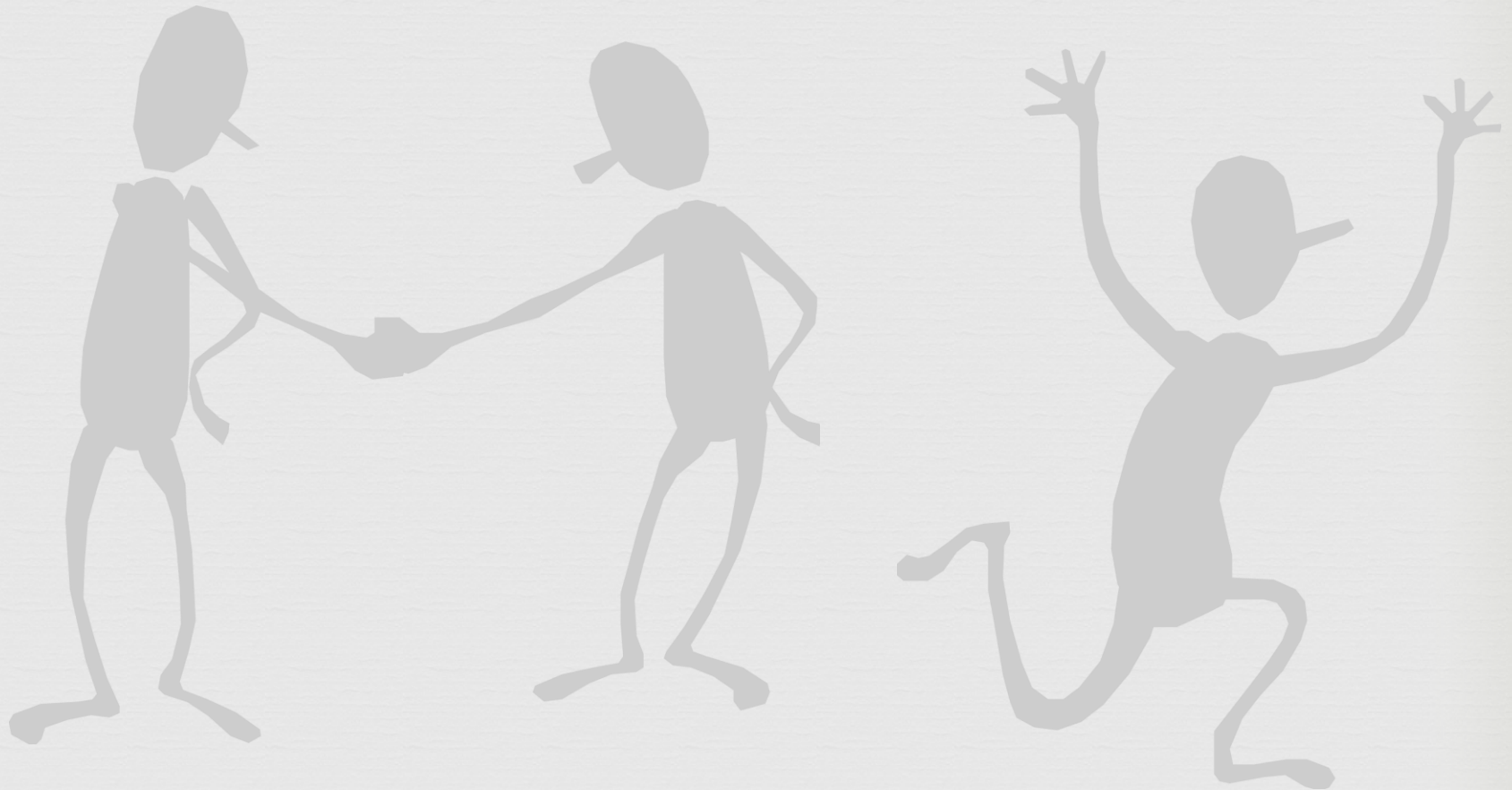
*Discrimination issues in
the community find their
way into the workforce*



Make an assessment of your own strengths and weaknesses in your interactions with your coworkers



Support positive behavior

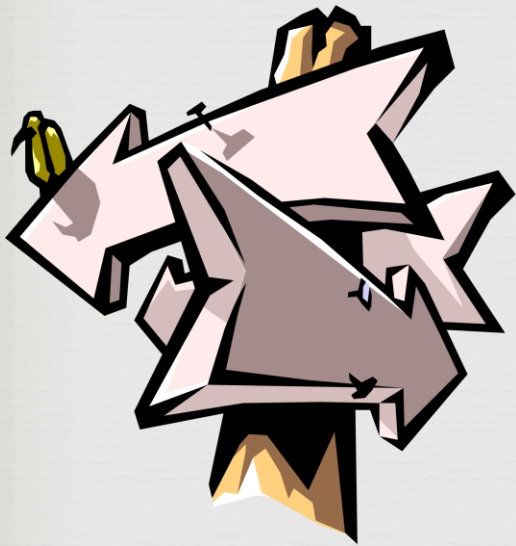


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**Know the policies and procedures
for addressing harassment**

Have a clear understanding

Follow the
company policy on
resolving problems



Lift each other up



**Don't pass your
discriminatory biases
unto someone else**

**Examine your
responsibility for
problems**

**Build rapport with a
victim of harassment**

**Find the resources to
address harassment and
inappropriate
workplace banter and
behavior**



**Be prepared to report
harassment and conflicts.**

**Remember: You are not expected
to tolerate harassment**

**Your colleagues will stand with
you when there is harassment**





Take big problems to
management's attention if
appropriate, whomever the
perpetrator



A workplace challenge you face alone...

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Or a challenge you face as
a team...



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**Will be resolved with
everyone working
together...**



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