Rebooting Workplace Harassment Prevention

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SELECT TASK FORCE
ON THE STUDY OF
HARASSMENT IN THE WORKPLACE

REPORT OF CO-CHAIRS
CHAI R. FELDBLUM & VICTORIA A. LIPNIC

JUNE 2016
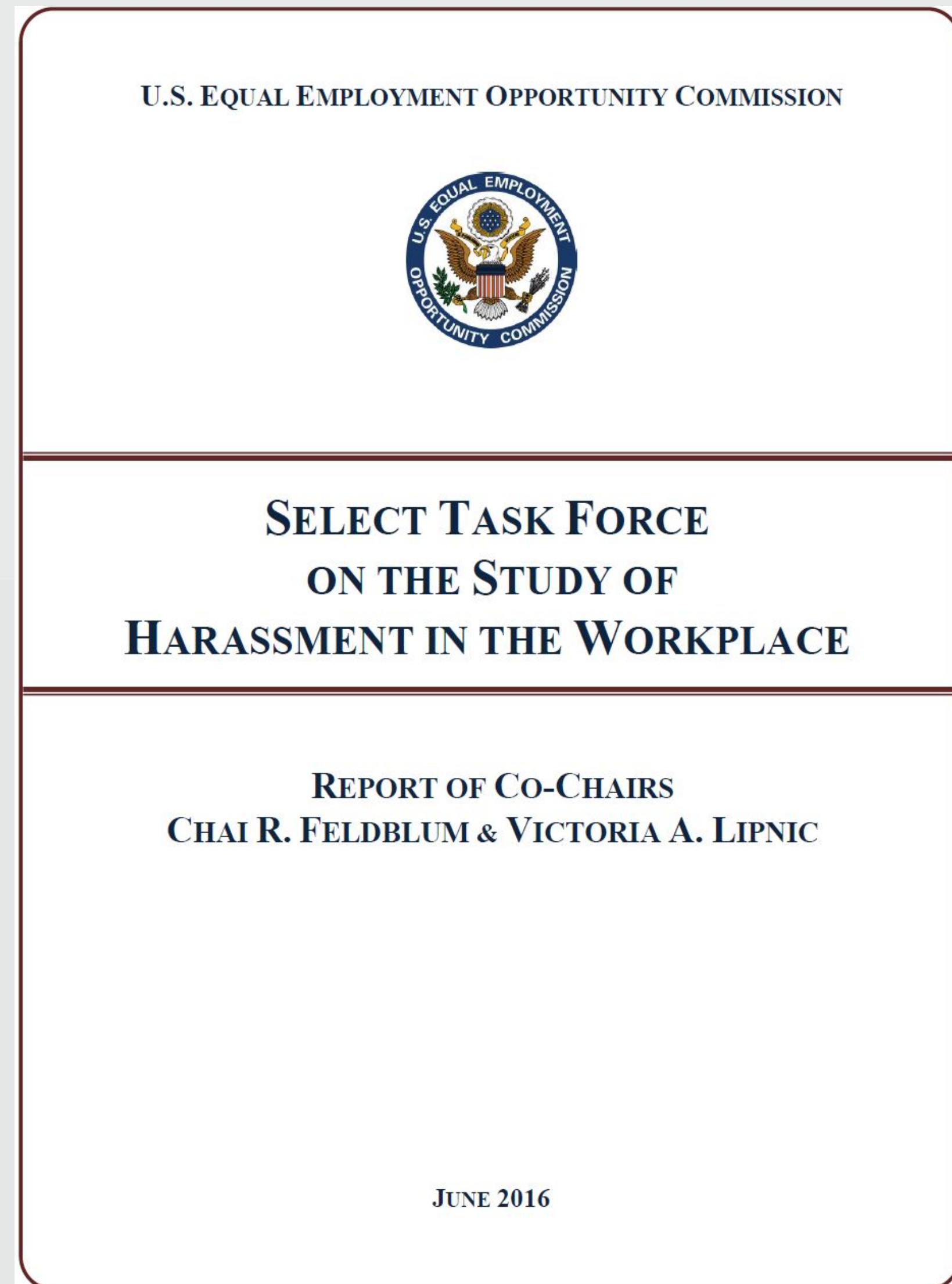
Highlights of the Report by Commissioner Chai Feldblum
&
Acting Chair Victoria Lipnic

Purpose of The Select Task Force

Assess what we know now about the extent of harassment

Explore promising ways to prevent and remedy harassment

Come up with creative new ideas to prevent harassment

2

Diversity of Views and Expertise

Academic Representation

Sahar F. Aziz, Associate Professor of Law, Texas A&M University

Meg A. Bond, Professor of Psychology and Director of the Center for Women and Work, University of Massachusetts Lowell

Jerry Carbo, Associate Professor of Management and Marketing, Shippensburg University

Frank Dobbin, Professor of Sociology, Harvard University

Ariane Hegewisch, Study Director, Institute for Women's Policy Research

Employer Representation

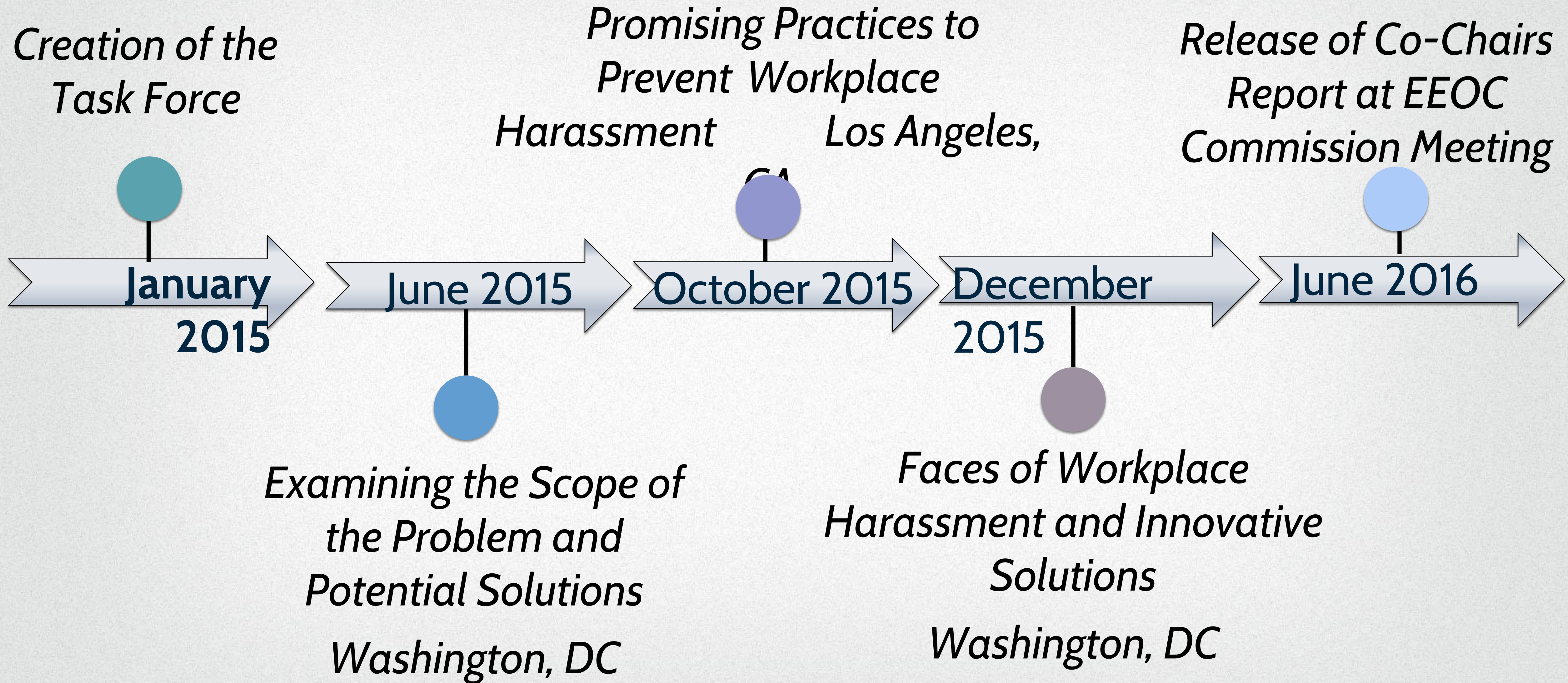**Stephen C. Dwyer**, General Counsel, American Staffing Association

Manuel Cuevas-Trisán, Vice President, Litigation, Data Protection & Employment Law, Motorola Solutions, Inc.

Jonathan A. Segal, Partner, Duane Morris and Managing Principal, Duane Morris Institute

Rae T. Vann, General Counsel, Equal Employment Advisory Council

Patricia A. Wise, Partner, Niehaus, Wise & Kalas; Co-Chair, Society for Human Resource Management Labor Relations Special Expertise Panel

Select Task Force on the Study of Workplace Harassment

Creation of the Task Force

Promising Practices to Prevent Workplace Harassment

Los Angeles, CA

Release of Co-Chairs Report at EEOC Commission Meeting

January 2015 → June 2015 → October 2015 → December 2015 → June 2016

Examining the Scope of the Problem and Potential Solutions

Washington, DC

Faces of Workplace Harassment and Innovative Solutions

Washington, DC

"**Harassment" in Report: Not Limited to *Illegal* Harassment**

Defining Harassment

Harassment, for purposes of the report, is defined as unwelcome or offensive conduct in the workplace that:

(a) is based on sex (including sexual orientation, pregnancy, and gender identity), race, color, national origin, religion, age, disability, and/or genetic information;
                                         AND
(b) is detrimental to an employee's work performance, professional advancement, and/or mental health.

Range of Possible Unwelcome Harassment

Offensive jokes, slurs, epithets or name calling

Offensive objects or pictures.

Unwelcome touching or contact

Physical threats or assaults

Ridicule, mockery, or put-downs

Constant or unwelcome questions about an individual's identity

Undue attention

"Not everything that is faced can be changed, but nothing can be changed until it is faced."
-James Baldwin

Our Findings

Workplace harassment remains a *persistent* problem.

Workplace harassment too often goes *unreported.*

There is a *compelling business case* for preventing harassment.

The good news: We have some *creative* ideas.

Leadership and *accountability* can prevent harassment.

Workplace *risk factors* should be evaluated.
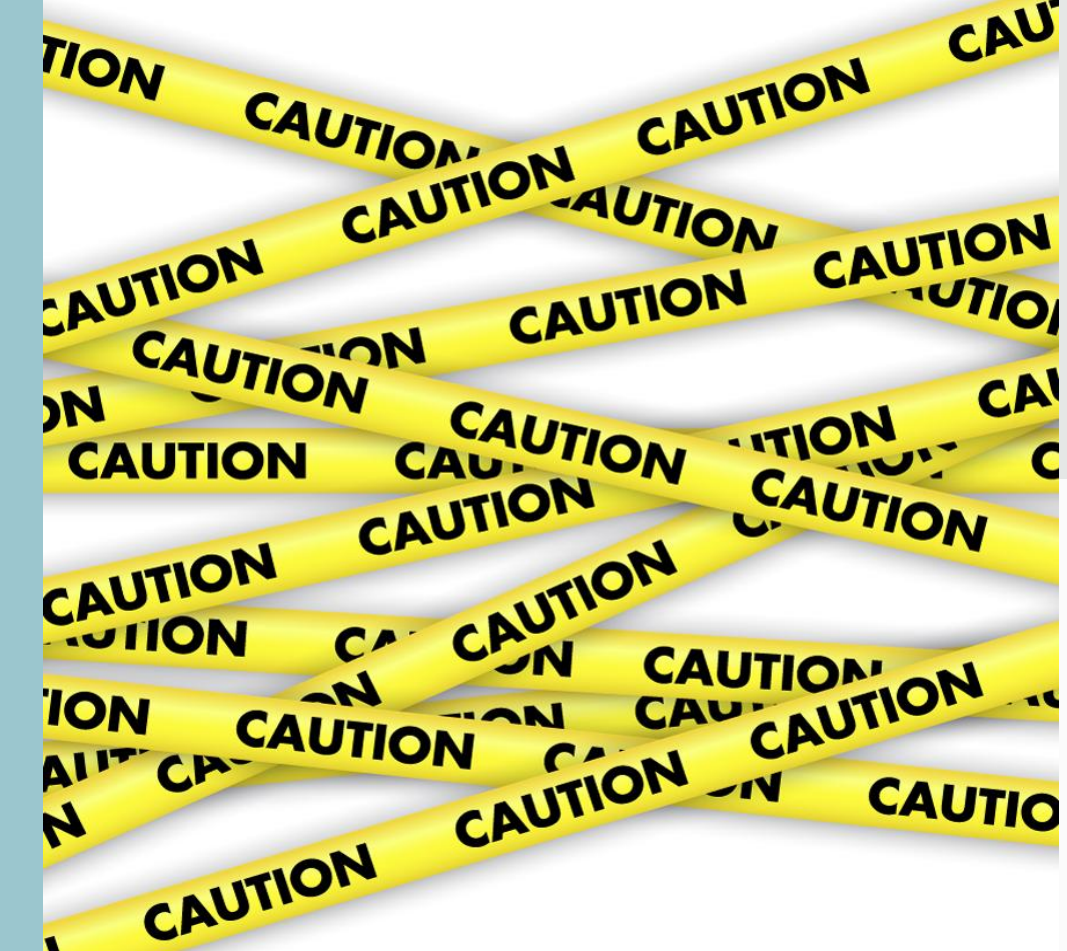
Training is *important*, but it needs to be the *right* training.

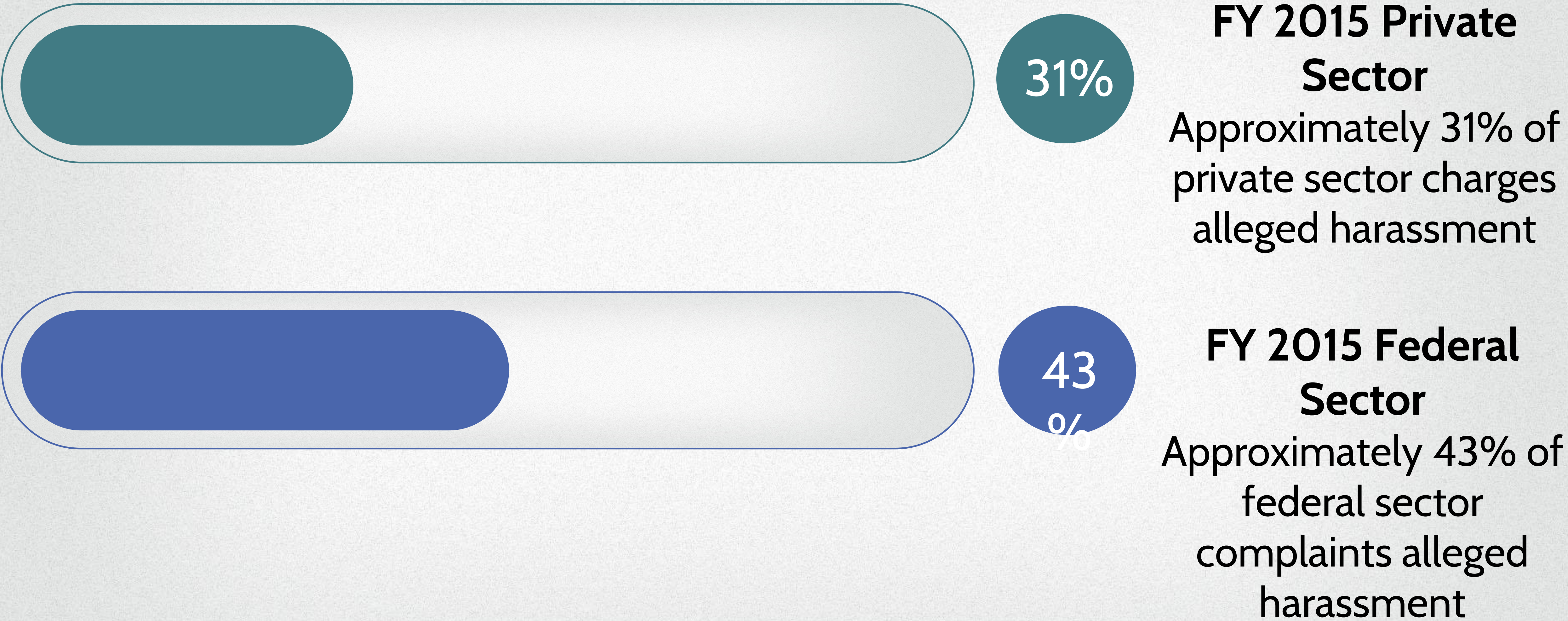Employers need *compliance training* that is *effective.*

Employers should consider *workplace civility training* and *bystander intervention training*

An *It's On Us* campaign in the workplace could be a *game changer.*
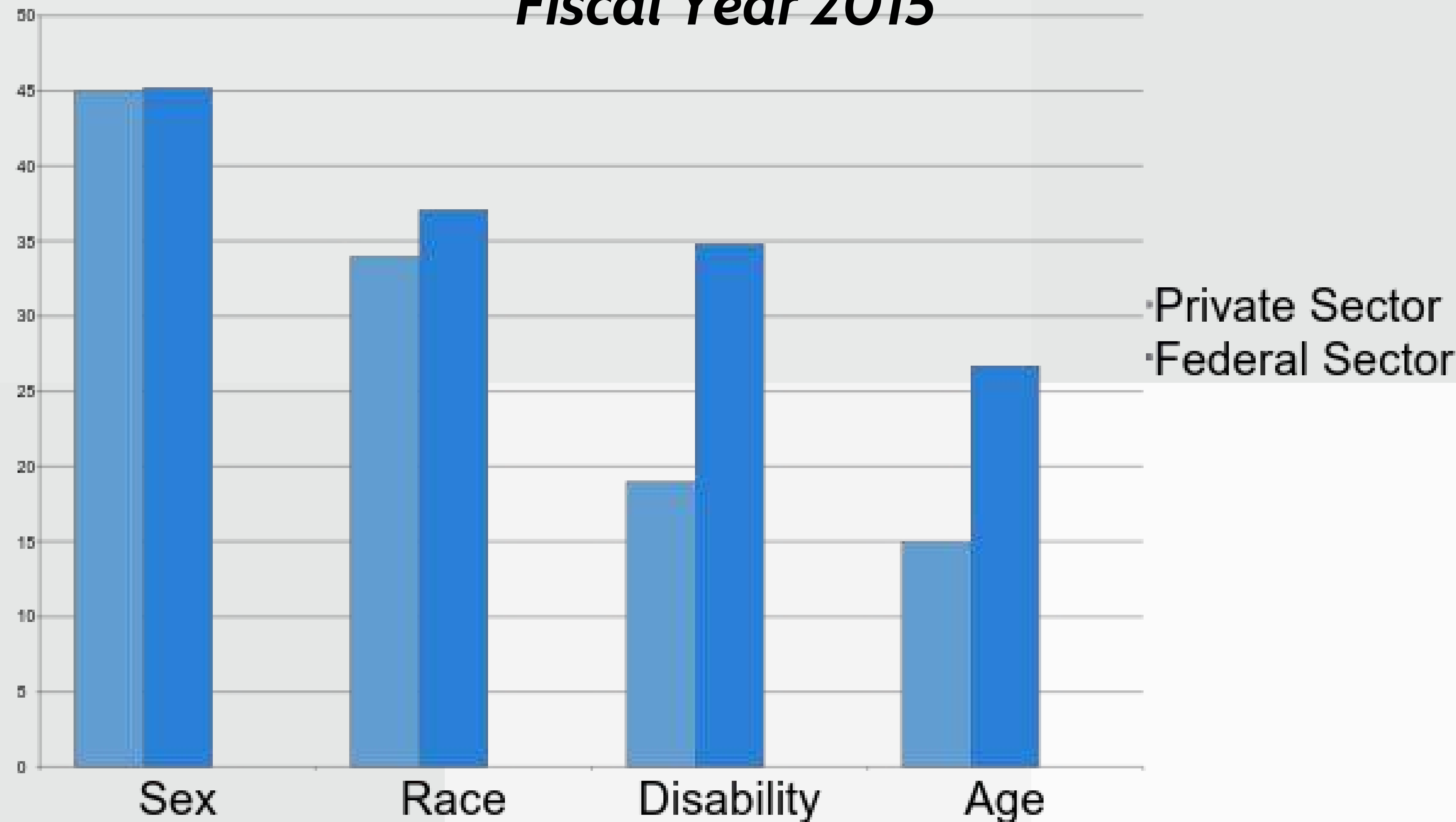
What do we know now?
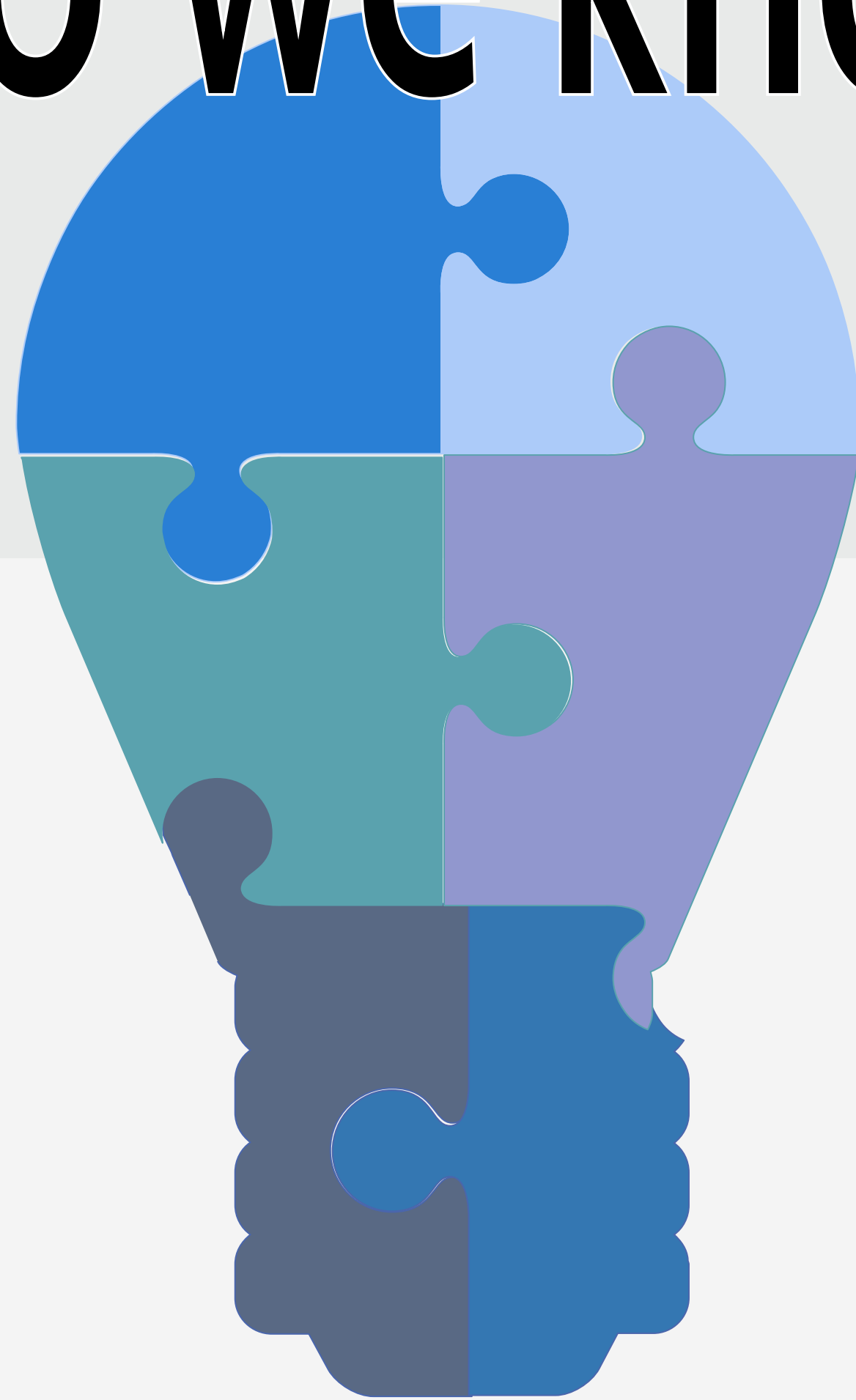
Harassment Charges and Complaints: *A Persistent Problem*

31%

FY 2015 Private Sector
Approximately 31% of private sector charges alleged harassment

43%

FY 2015 Federal Sector
Approximately 43% of federal sector complaints alleged harassment

Harassment Charges and Complaints by Category
Fiscal Year 2015

Prevalence of Workplace Harassment
What do the Survey Data Say?

Solid data on sex based harassment: 25-60%

Some data on sexual orientation and gender identity harassment: 35%-58%

Little data on racial and ethnic harassment: 40-70%

Next to no data on harassment based on disability, religion, or age

Prevalence of Sex-Based Harassment: *Varying Definitions*

25%

40%

60%
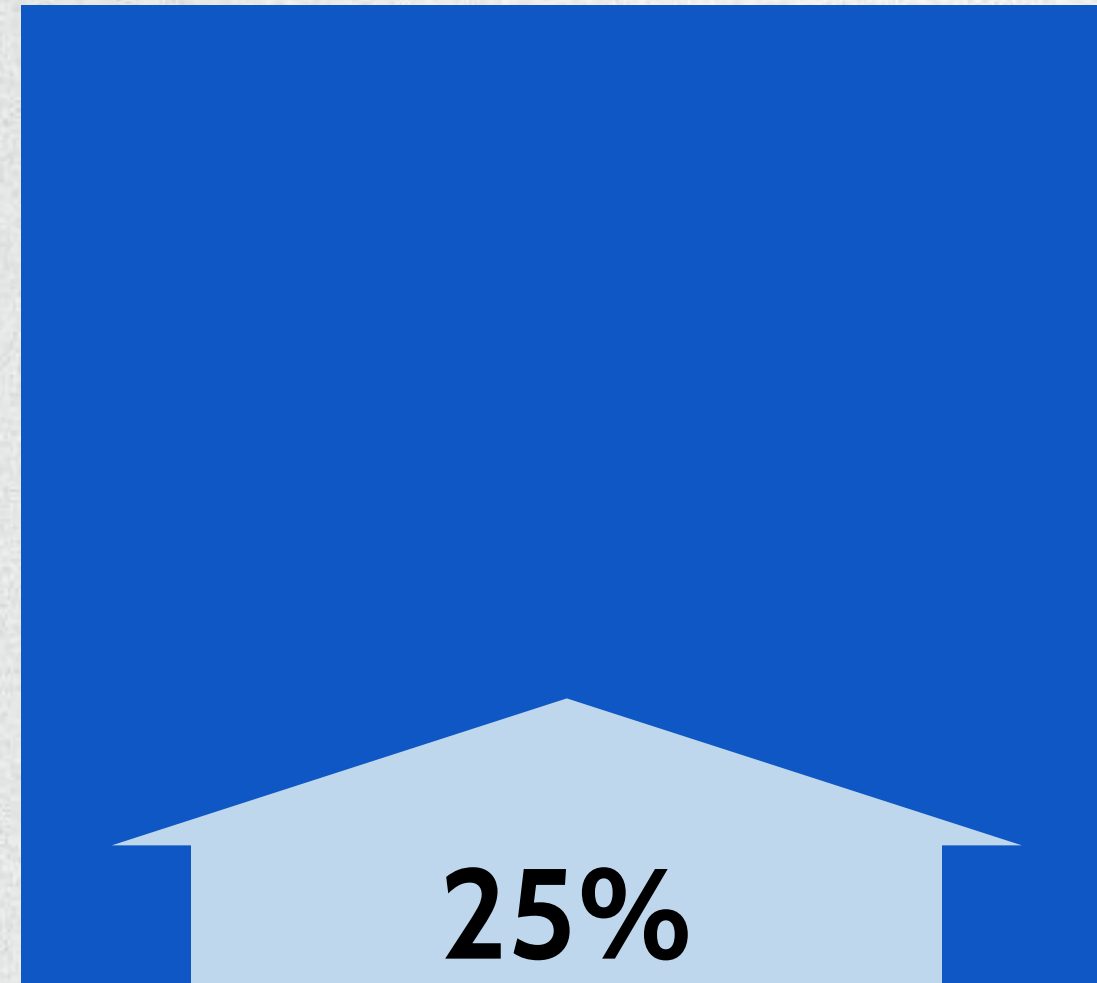
Most Conservative Estimate
25% of women experience
"sexual harassment," if not
defined in the survey.
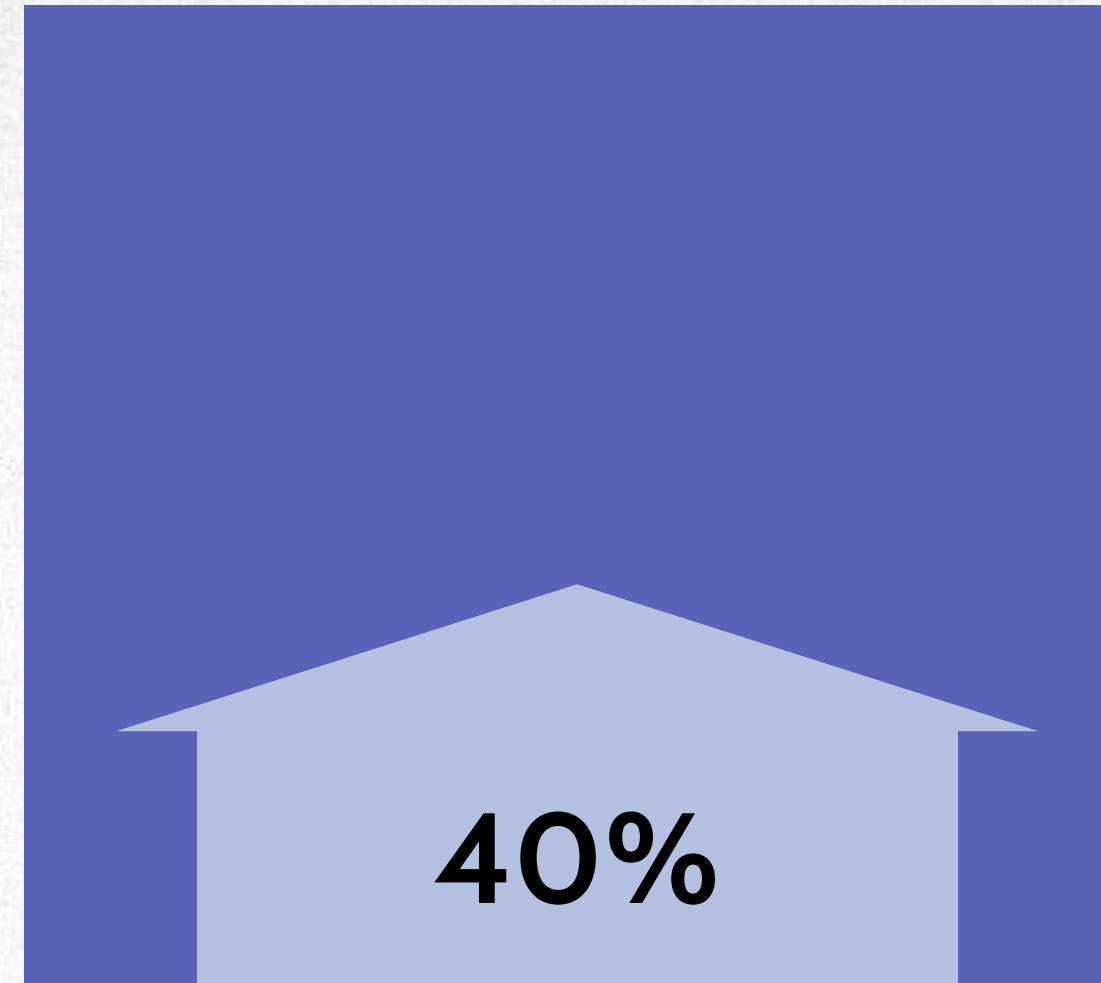
More Accurate Estimate
40% of women experience
unwanted sexual attention or
sexual coercion, even if they
don't label it as
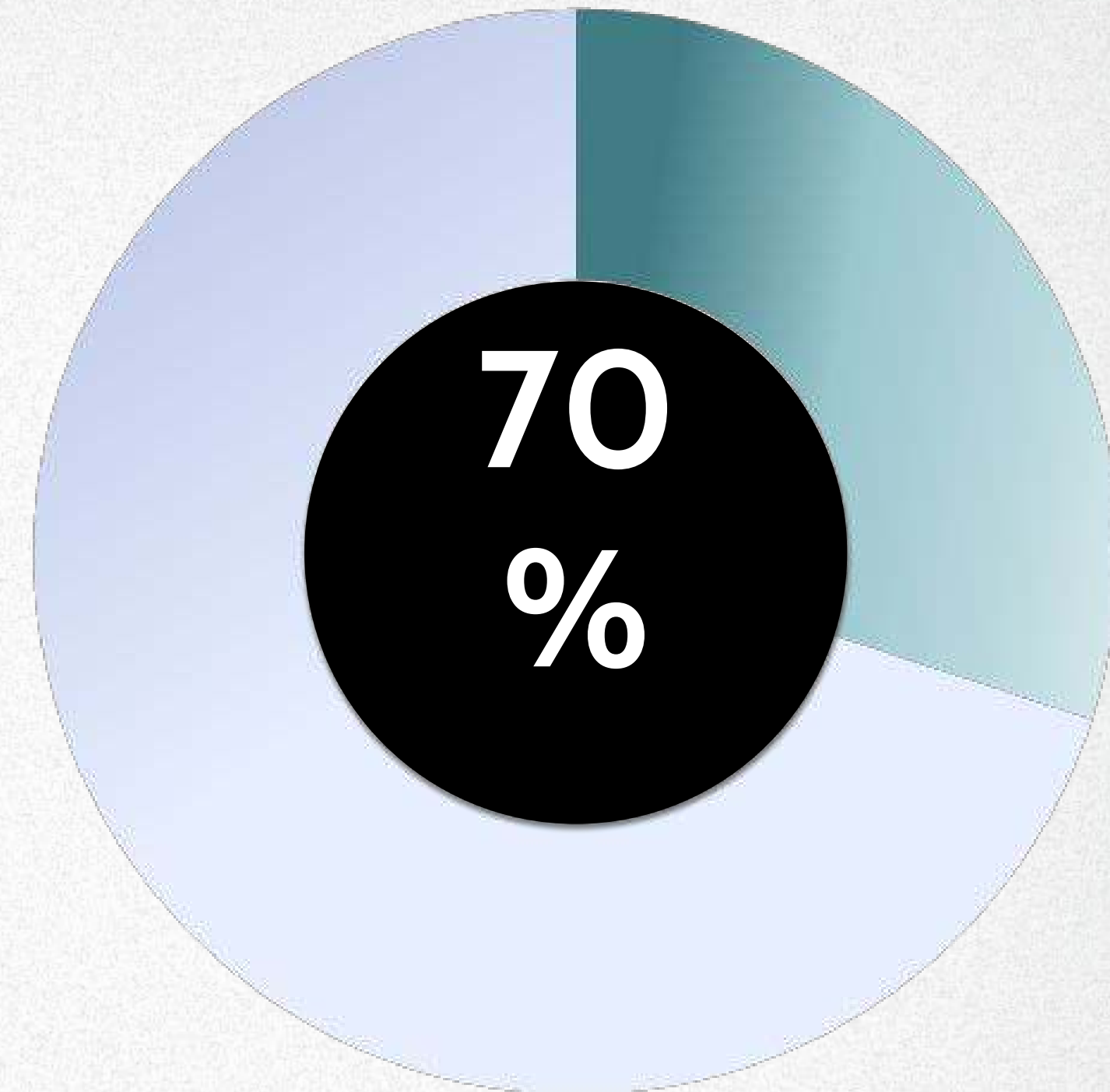*"sexual harassment."*
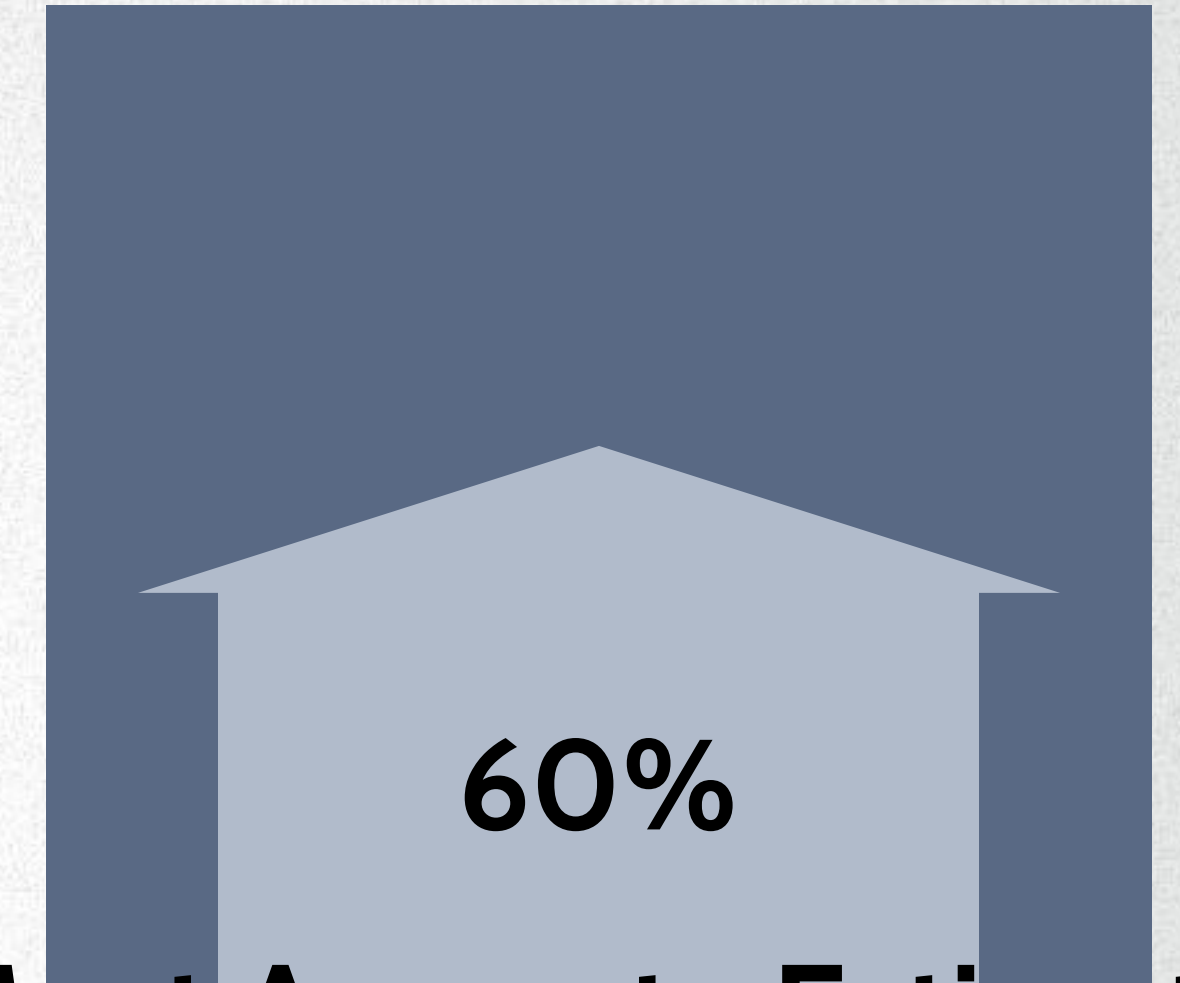
Most Accurate Estimate
60% of women
experience *unwanted
sexual attention* or *sexual
coercion*, OR *sexually crude
conduct* or *sexist
comments* in the
workplace.

13

Harassment is HUGELY UNDER-REPORTED

85%

70%
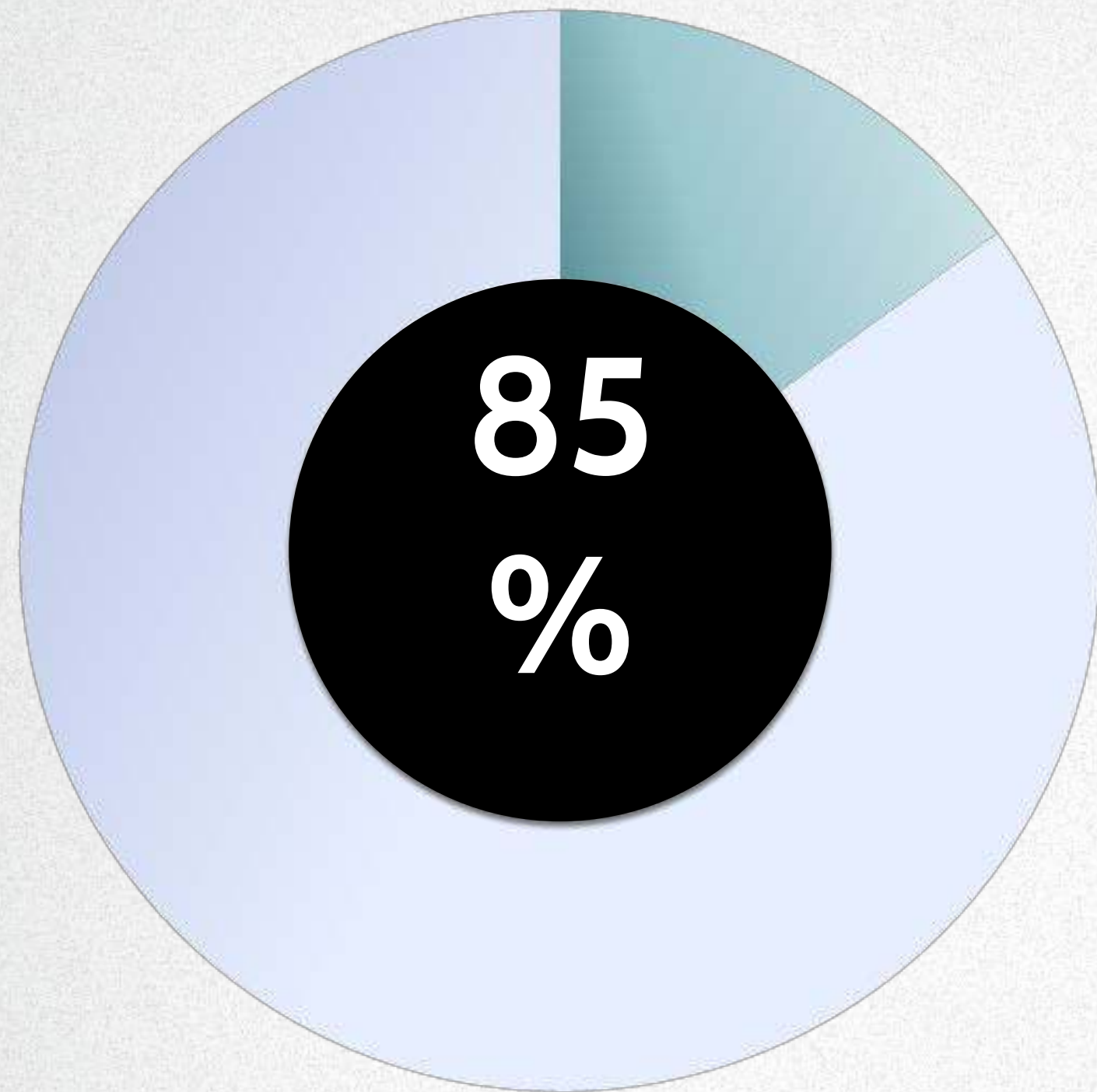
Upwards of 85% of people never file a formal legal charge.

Approximately 70% of employees never even complain internally.

Why the Under-Reporting?

Humiliation

Disbelief

Ostracism

Blame

FEAR

Inaction

Damage to Reputation

Damage to Career

Retaliation

15

Fears of Retaliation Are Well-Founded

One study found that **75%** of employees who spoke out against workplace mistreatment faced some form of retaliation.


HELP!

Other studies found that sexual harassment reporting is often followed by:
  -organizational indifference
  -trivialization of the harassment complaint
  -hostility and reprisals against the victims

"The most reasonable response to harassment in *many* organizations is not to report it, not to file a complaint, not even to speak to management about the problem."
-Professor Lilia Cortina, University of Michigan
(Testimony to the Select Task Force)

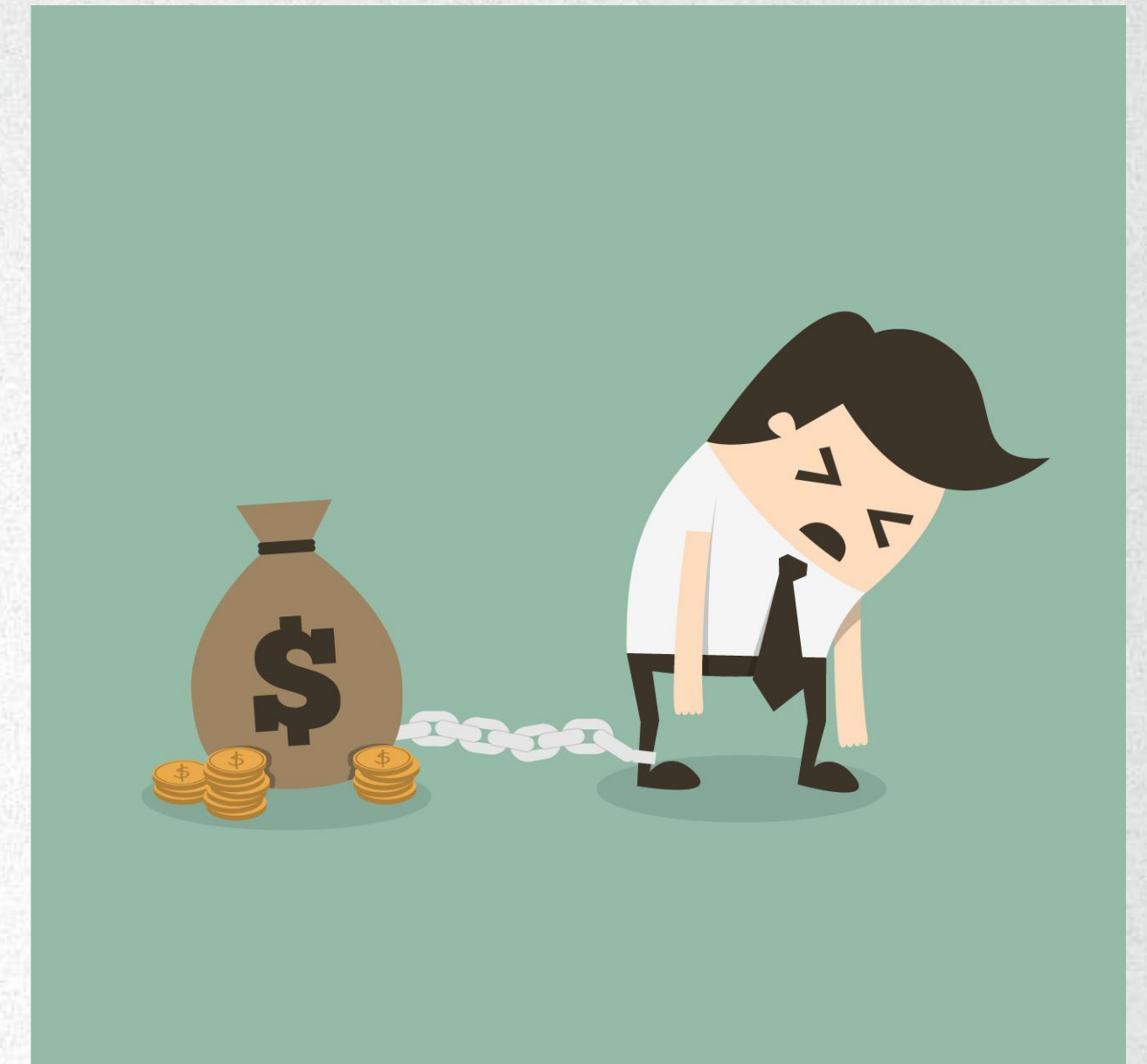# Common Responses to Harassment
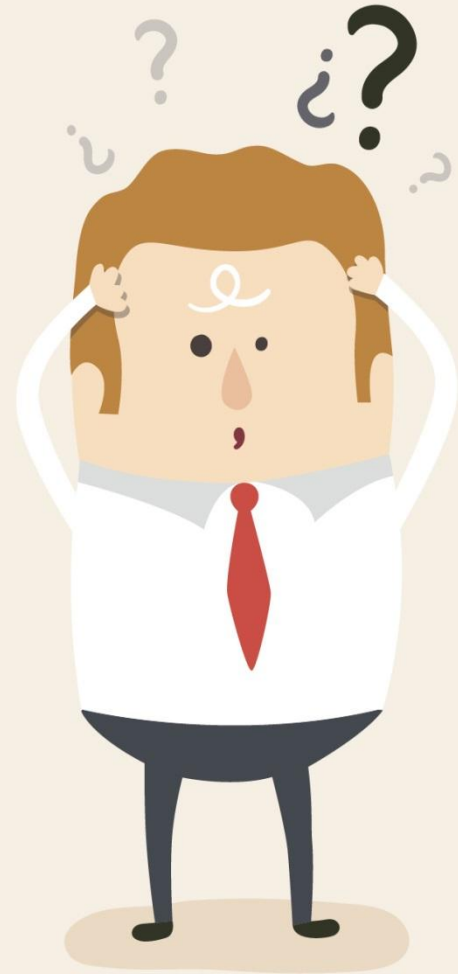
Endure the behavior
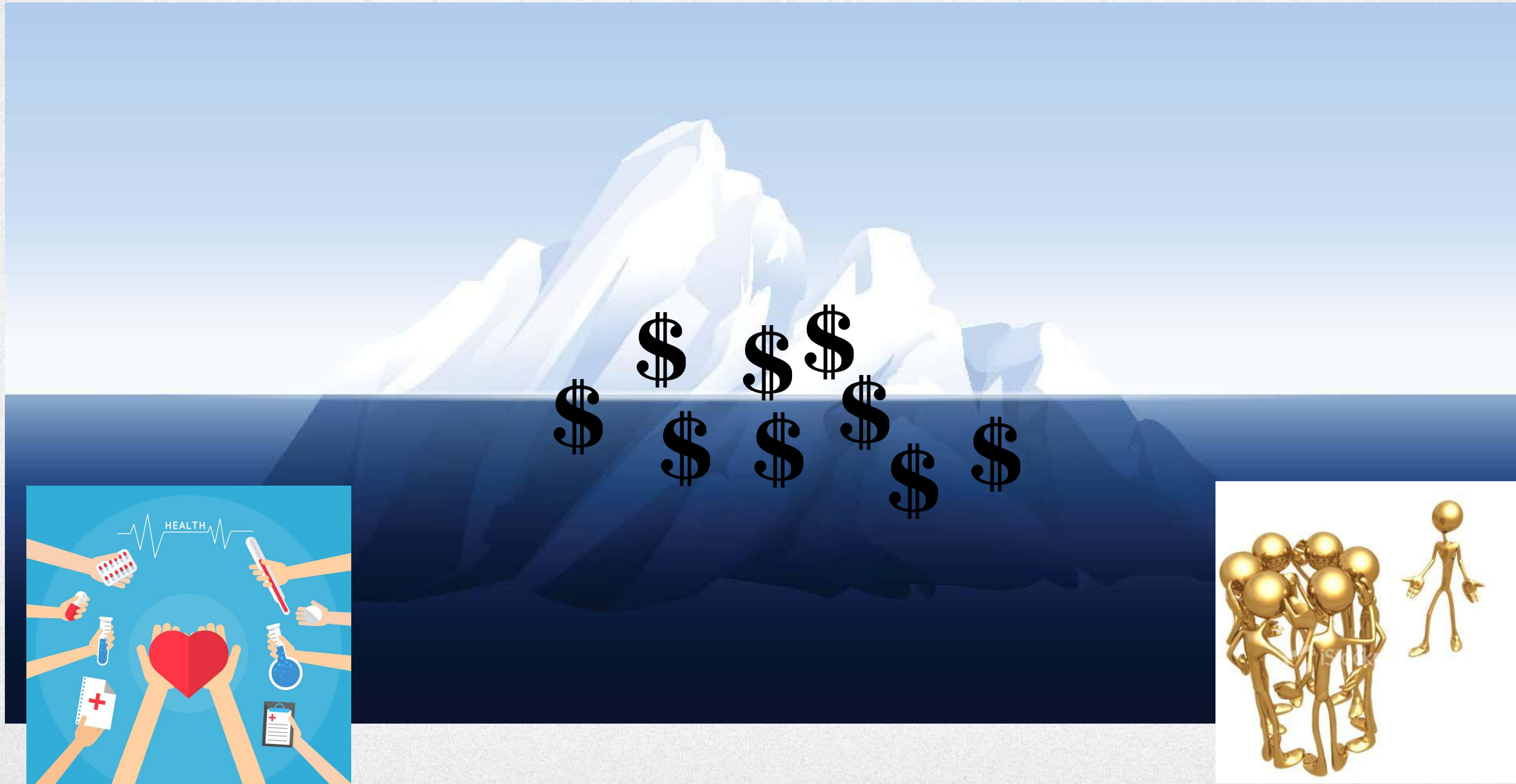
Avoid the harasser

Downplay the gravity of the situation

Seek support from family & friends

Leave the job, if one can

A Compelling Business Case:
Employers Should Care about Stopping Harassment

HARASSMENT IS WRONG

Employers should care about stopping harassment because *harassment is wrong* – and, in many cases, *illegal*.

Workplace harassment will always *cause harm to the target* and can actually ruin an employee's life.

Moral obligation and legal duty are not the complete story, though. *Employers should **also** stop harassment **because it makes good business sense**.*

Direct Financial Costs– EEOC Processes

$698,700,000

Between FY2010 to FY2015, employers paid $698.7 million during EEOC's pre-litigation enforcement process to employees alleging harassment.

$125,000,000

In just one year, EEOC secured **$125 million** in its **pre-litigation process.**

AND $39 million in EEOC's litigation, for employees alleging harassment.

$39,000,000

22

Plus...

Costs also include **monetary relief** obtained by **private plaintiff's attorneys** for their clients

Federal agencies also pay monetary damages for harassment claims
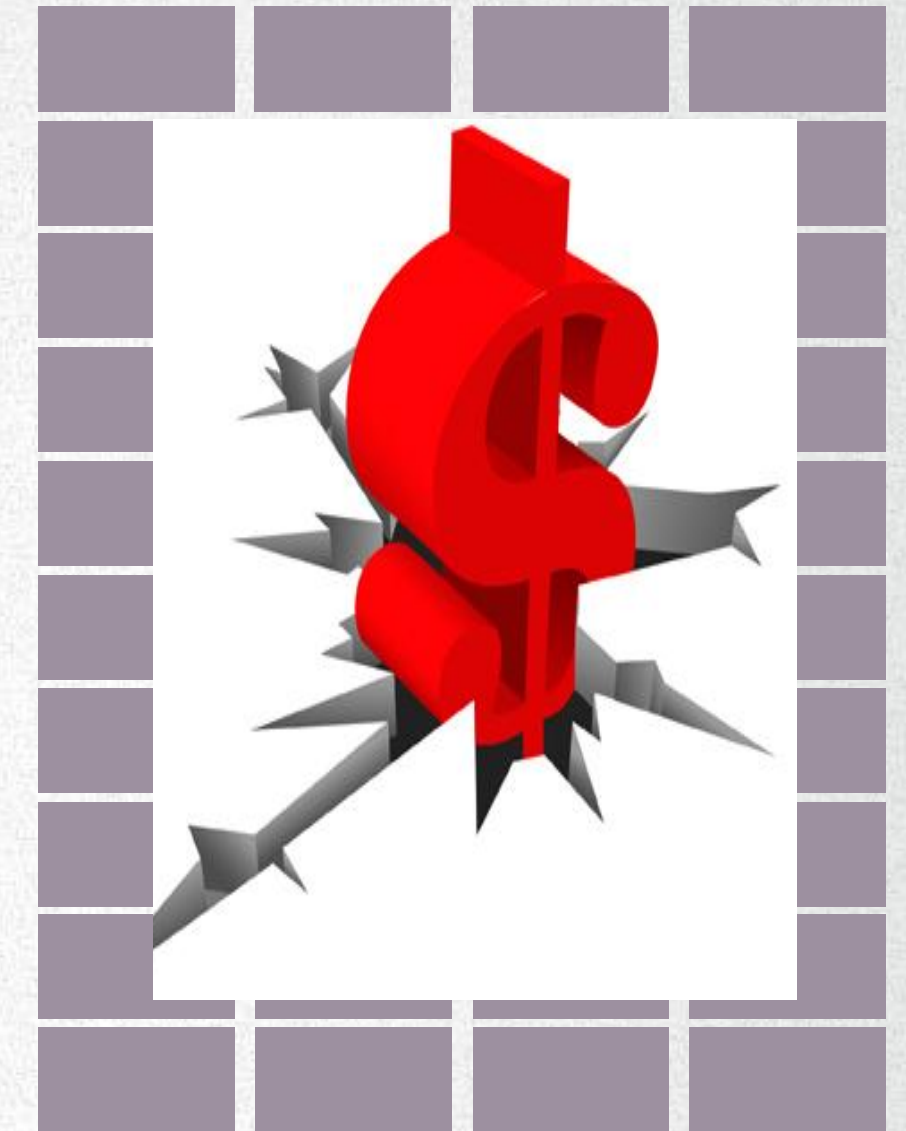
Indirect Financial Costs

Adverse impact on health & workplace productivity of the **target** of harassment

Adverse impact on health & workplace productivity of **coworkers** who witness harassment

Job turnover

Reputational harm

24

Health Impact & Workplace Productivity of the
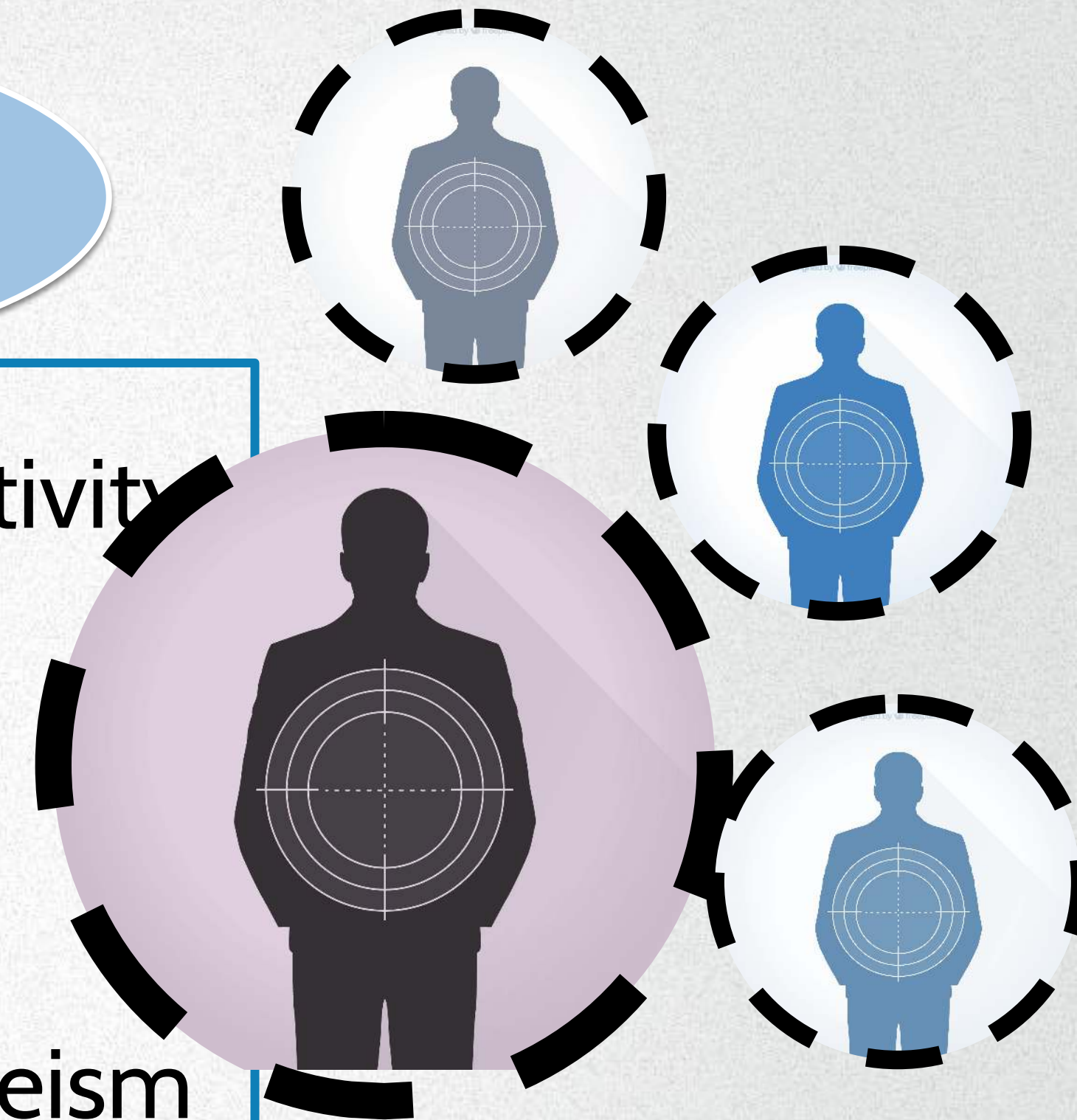# Target of Harassment

Psychological Harm
- depression
- anxiety
- PTSD
- negative mood
- eating disorders
- self-blame
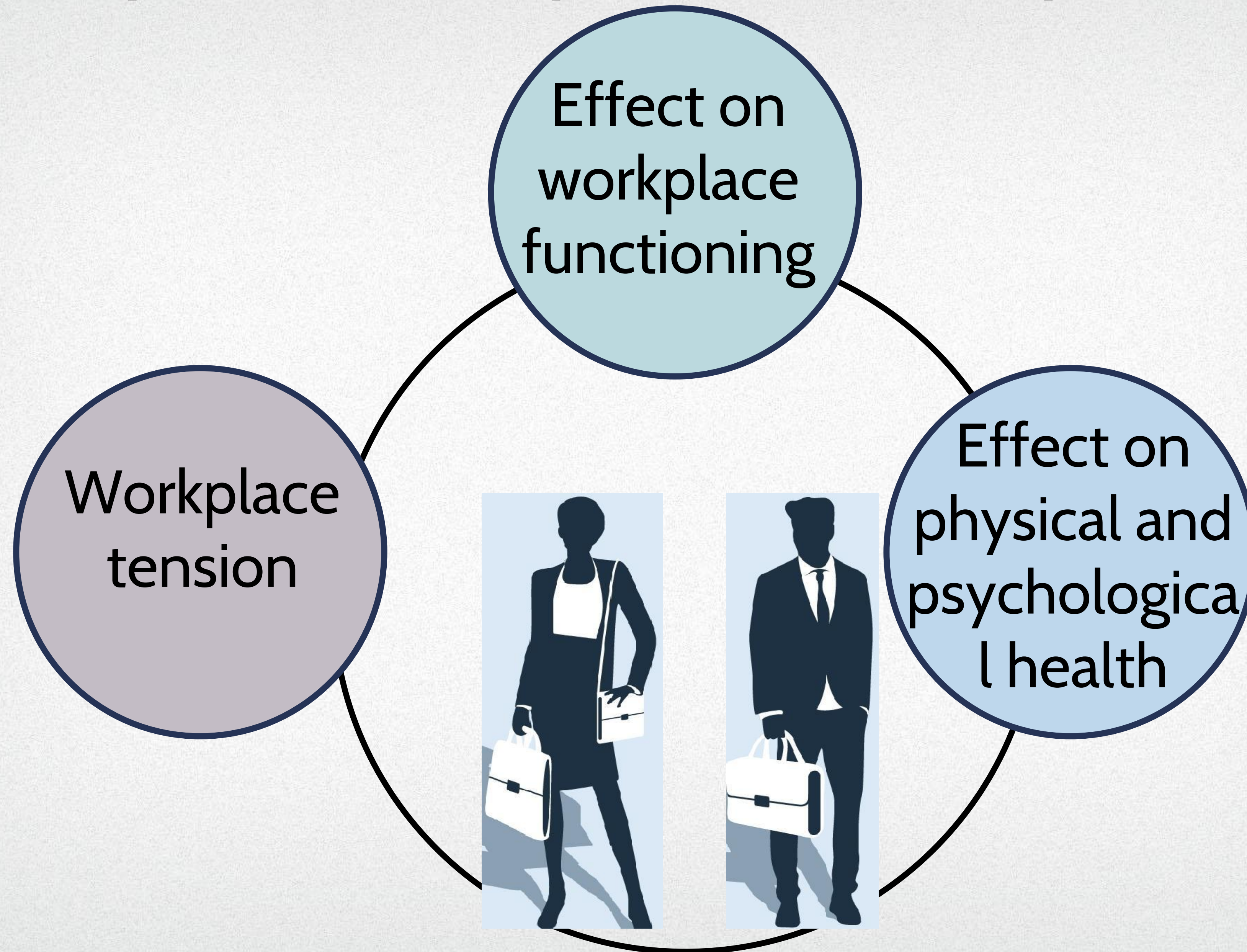- anger
- substance abuse

Physical Harm
- headaches
- exhaustion
- sleep problems
- nausea
- weight changes
- cardiovascular issues
- gastric issues
- respiratory issues

Workplace Productivity
- decreased productivity
- job dissatisfaction
- work withdrawal
- disengagement
- tardiness
- excessive absenteeism
- work time spent discussing the harassment

Job Turnover

Job turnover is potentially **the largest single component of the overall cost of harassment.**

Clients

Impact on the ability to retain clients and attract new clients

Reputational Harm

Employees

Negative effects on the organization's ability to retain and attract employees

Brand

Negative attitudes toward the brand or brand image
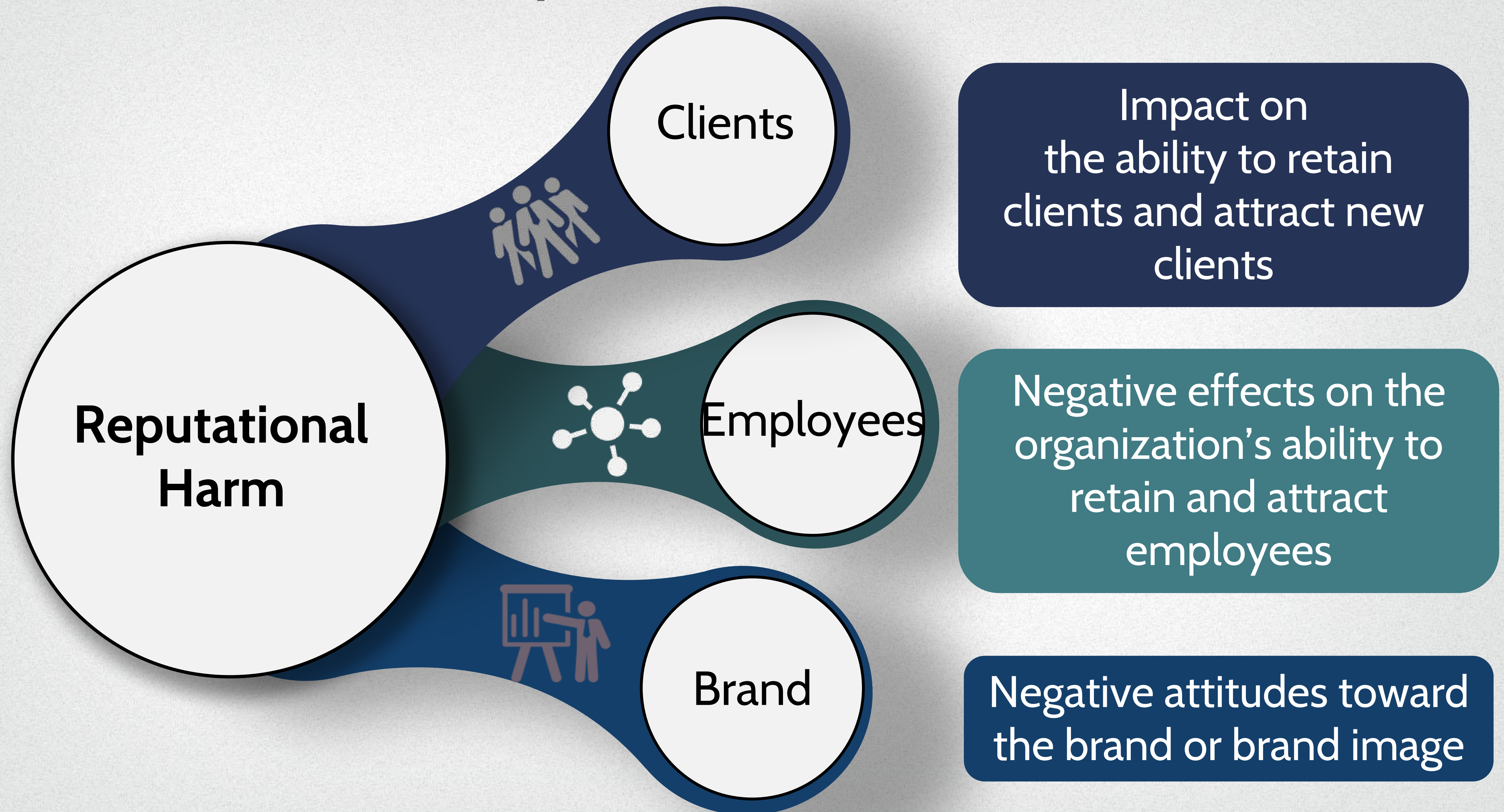
# The Perils of the Superstar Harasser

Employers often make a **wrong cost-benefit analysis** when faced with allegations of harassment against a **highly valued employee**.

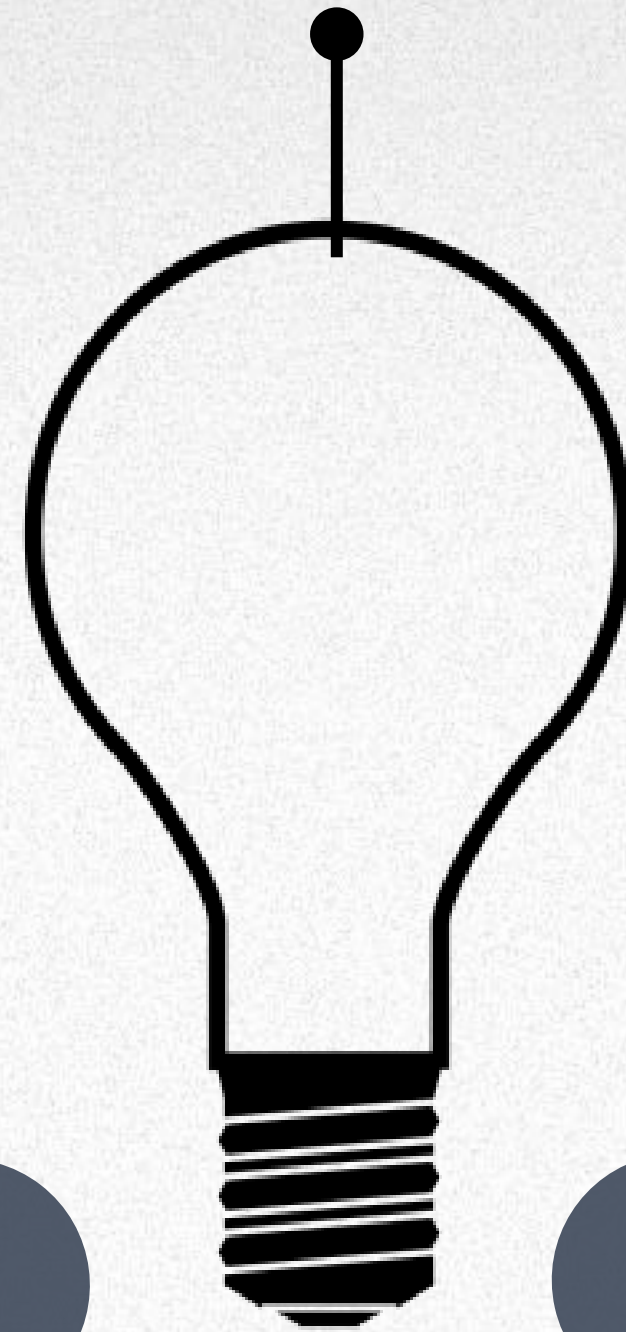Employers are often tempted to ignore misconduct for **fear** of **cost** to the **organization.**

In reality, the cost of allowing harassment to **go unchecked is higher** than the cost of losing a highly valued employee.
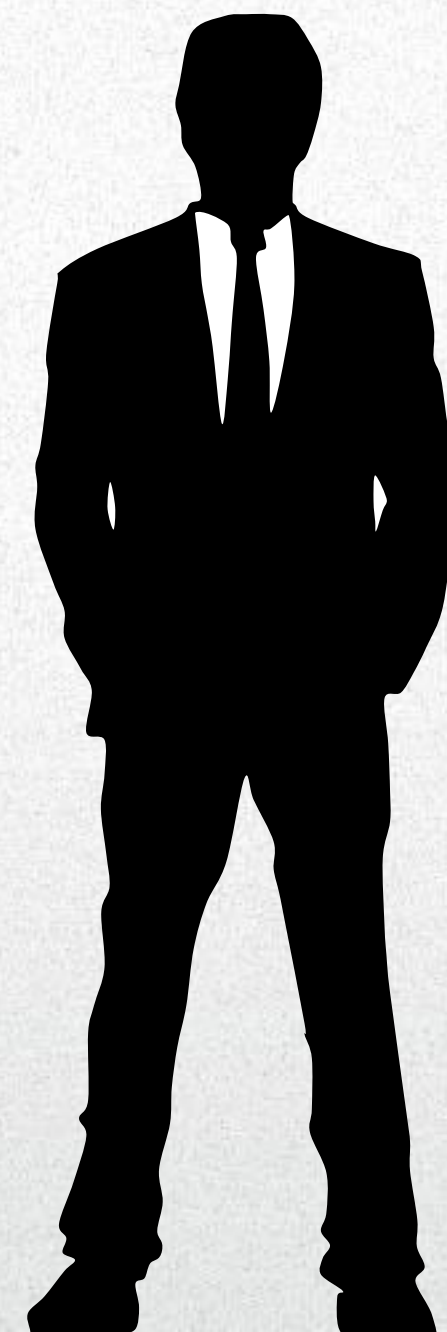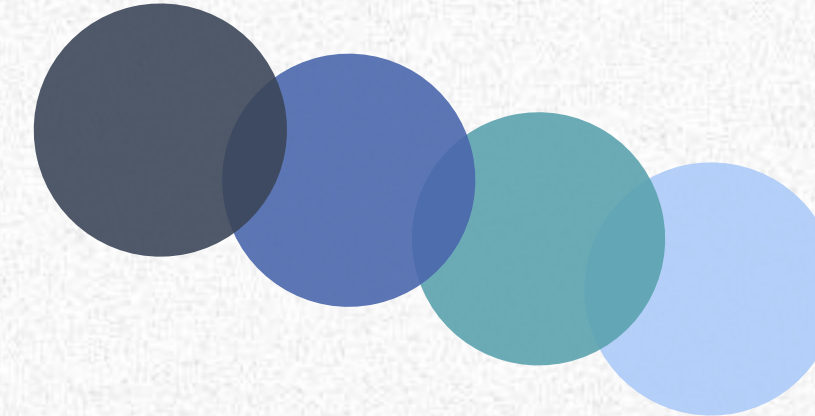
What Can We All Do?
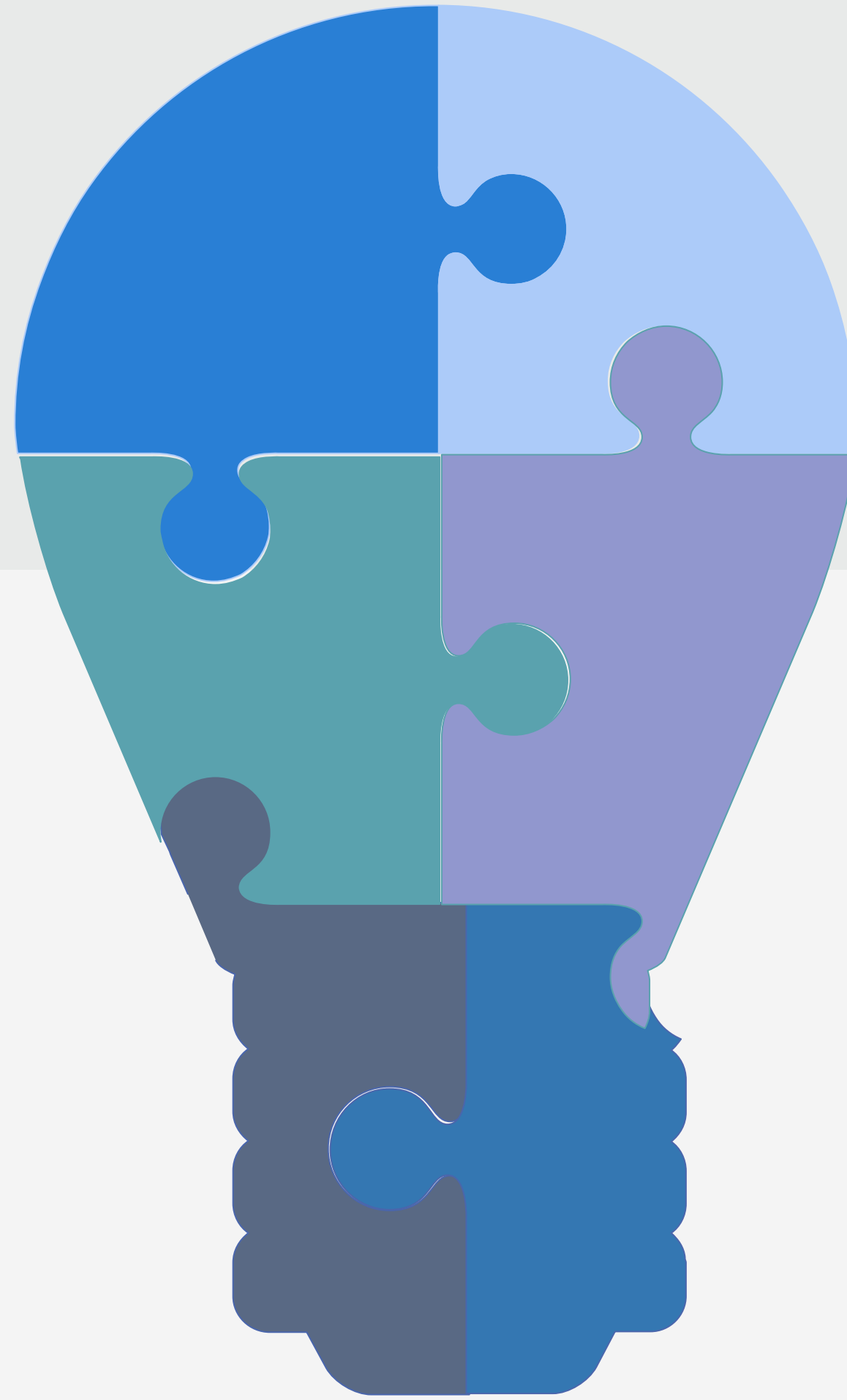
A common sense research finding

Workplaces that tolerate harassment have more of it.
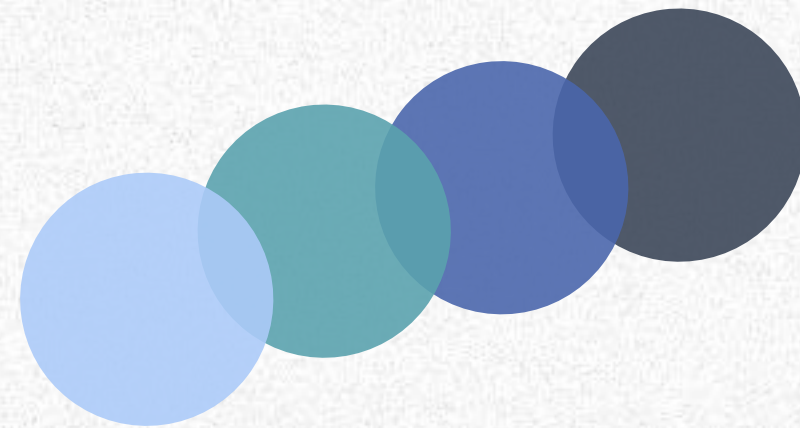
And workplaces that are not tolerant of harassment have less of it.

Leadership: It Starts at the Top

Values: Leaders believe **harassment is wrong** and should not occur in the workplace. Leaders convey **a sense of urgency** in stopping and preventing harassment.

Authenticity: Workers believe that leaders **mean what they say.**
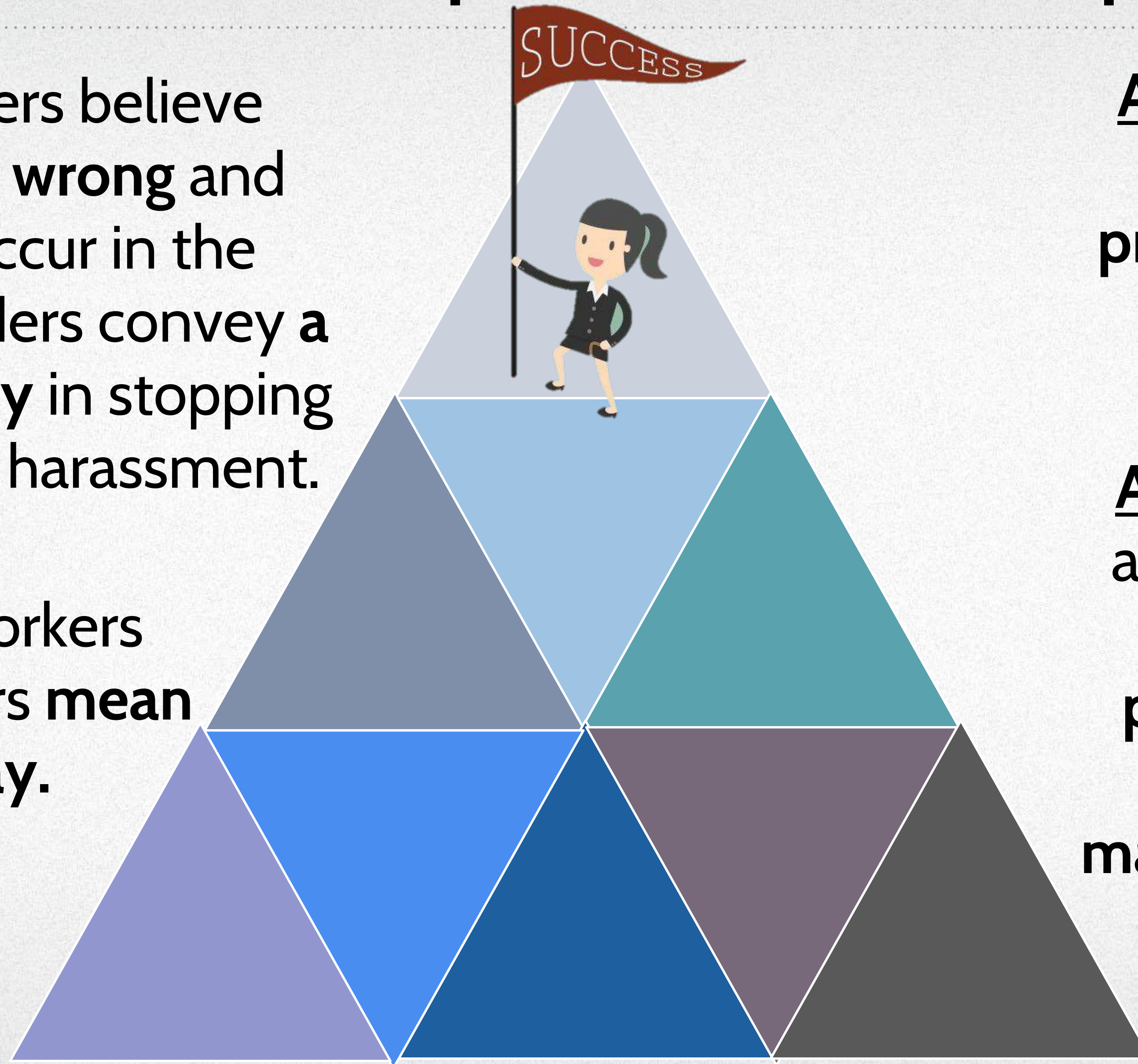
Awareness: Leadership knows **about the prevalence** of workplace harassment: e.g., via climate surveys.

Accountability: Leaders address harassment in a **swift, effective, and proportionate manner**. Leadership holds **managers accountable** for stopping harassment.

SUCCESS

Frontline Management is Key

Frontline managers must be **trained on how to respond** to reports or observations of harassment in a swift and correct manner.

Frontline managers **must be held accountable** for their responses to harassment – using discipline or accolades.

The extent of harassment in a manager's division is not necessarily best measured by **the number of complaints from that division.**
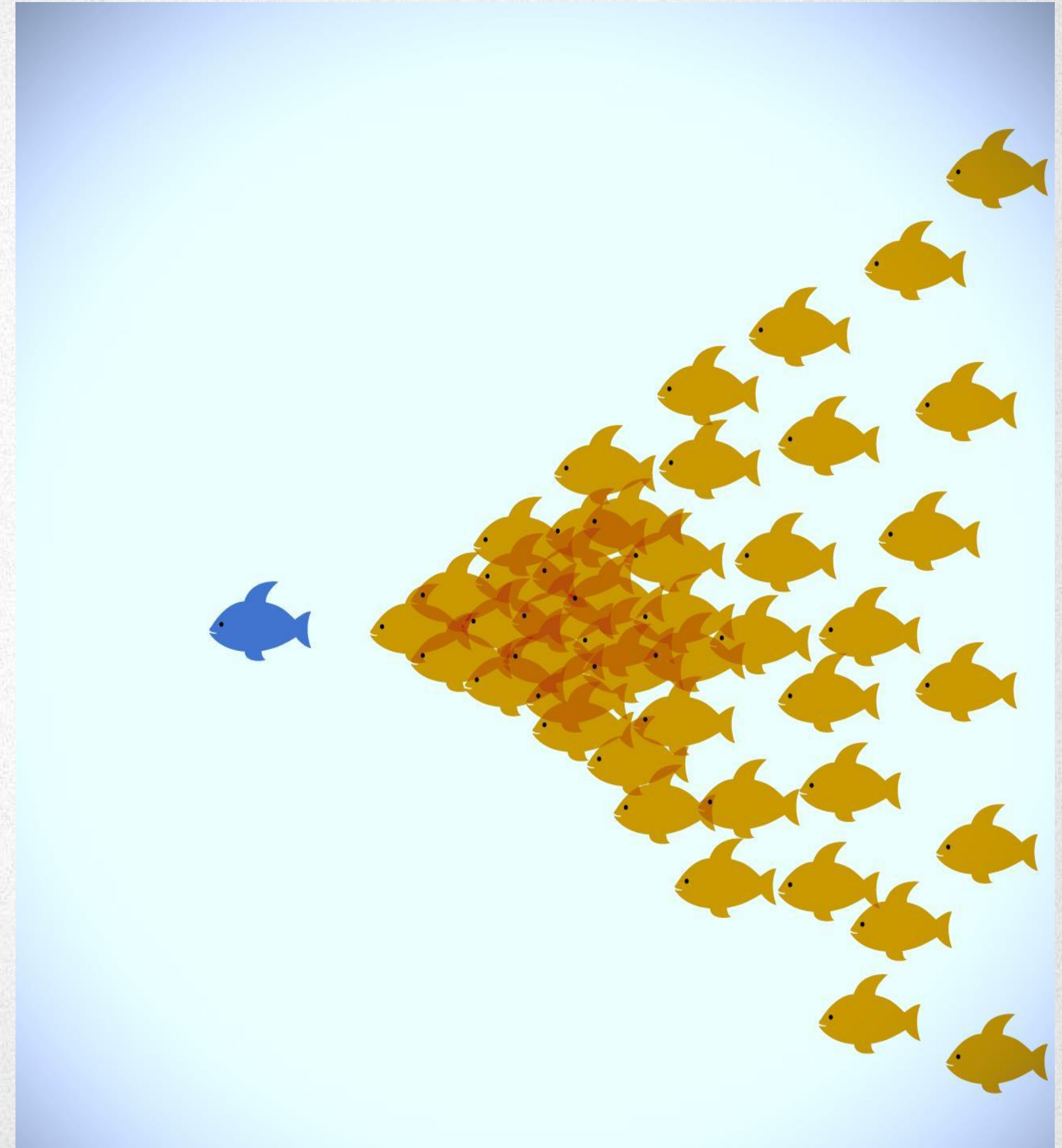
"One organization I worked with several years ago asked me if I had new courseware for use with some previously trained managers. When I asked them what they wanted to accomplish, they indicated that several individuals were continuing to tell off-color jokes and make inappropriate comments. While I welcomed the opportunity to be of service, **it seemed to me the issue was not what training to do next but rather why these decision-makers hadn't taken steps to deal with these individuals' behavior and failure to perform to clear standards.**"

-Stephen Paskoff, founder of Employment Learning Innovations, Inc.
8 Fundamentals of a Civil Treatment Workplace

Checklist on Leadership

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<u>Checklist One: Leadership and Accountability</u>

The first step for creating a holistic harassment prevention program is for the leadership of an organization to establish a culture of respect in which harassment is not tolerated. Check the box if the leadership of your organization has taken the following steps:

☐ Leadership has allocated sufficient *resources* for a harassment prevention effort
☐ Leadership has allocated sufficient *staff time* for a harassment prevention effort
☐ Leadership has *assessed* harassment *risk factors* and has taken steps to *minimize* those risks

Based on the commitment of leadership, check the box if your organization has the following components in place:

☐ A harassment prevention *policy* that is *easy-to-understand* and that is *regularly communicated* to all employees
☐ A harassment reporting *system* that employees *know about* and is *fully resourced* and which accepts reports of harassment experienced and harassment observed
☐ *Imposition of discipline* that is prompt, consistent, and proportionate to the severity of the harassment, if harassment is determined to have occurred
☐ *Accountability* for mid-level managers and front-line supervisors to prevent and/or respond to workplace harassment
☐ Regular *compliance trainings for all employees* so they can recognize prohibited forms of conduct and know how to use the reporting system
☐ Regular *compliance trainings for mid-level managers and front-line supervisors* so they know how to prevent and/or respond to workplace harassment

Bonus points if you can check these boxes:

☐ The organization conducts *climate surveys* on a regular basis to assess the extent to which harassment is experienced as a problem in the workplace
☐ The organization has implemented *metrics* for harassment response and prevention in supervisory employees' performance reviews
☐ The organization conducts *workplace civility training* and *bystander intervention training*
☐ The organization has *partnered with researchers* to evaluate the organization's holistic workplace harassment prevention effort

Workplace Risk Factors: *Situational Awareness*

❏ There are factors that may put a workplace at risk for harassment.

❏ While existence of a risk factor does not mean that harassment will occur, analyzing workplace risk factors is a good means of prevention.

Risk Factors for Harassment

Homogeneous workforces

Cultural and language differences in the workplace

Workforces with many young workers

Workplaces that rely on customer service or client satisfaction

Isolated workspaces

Decentralized workplaces
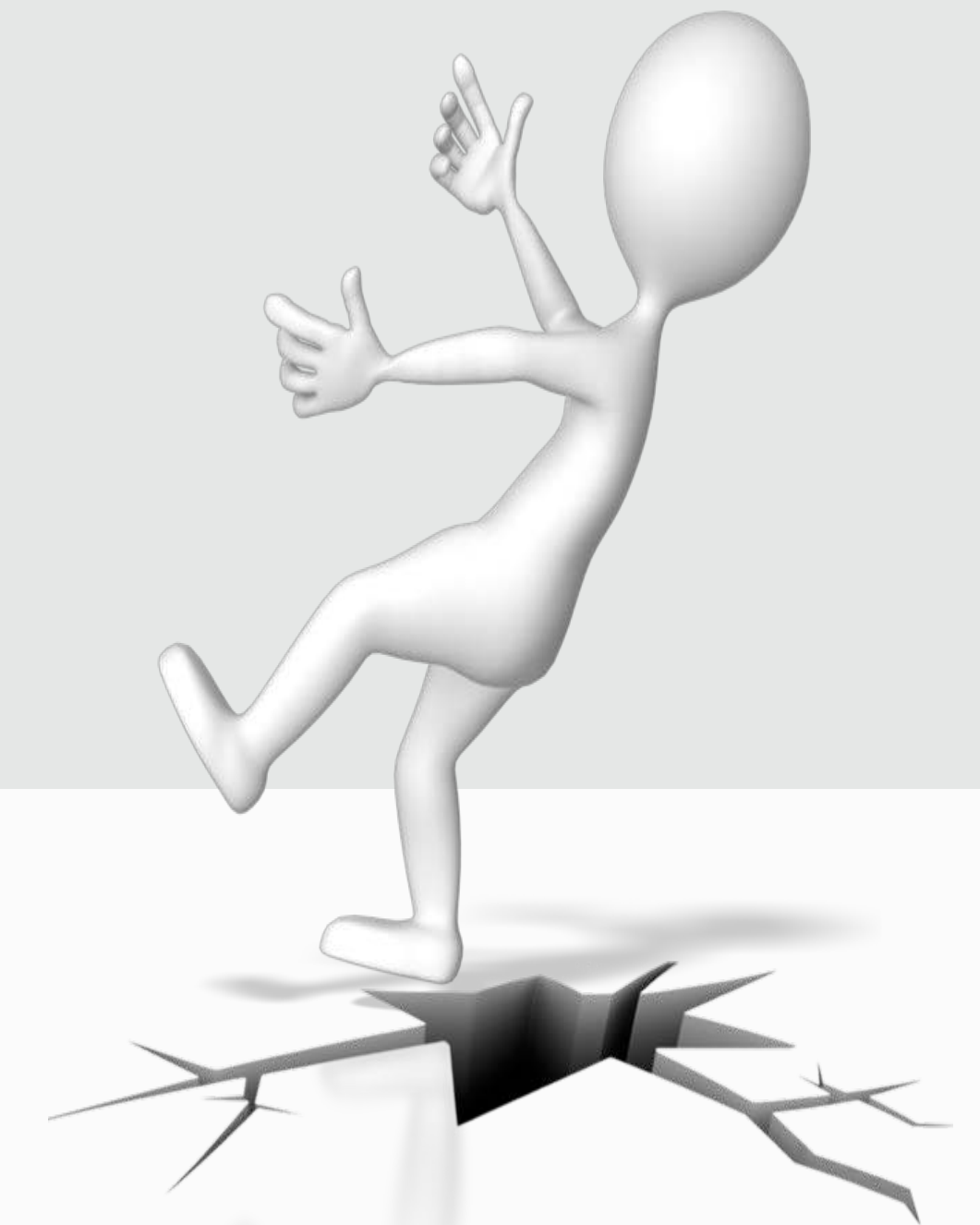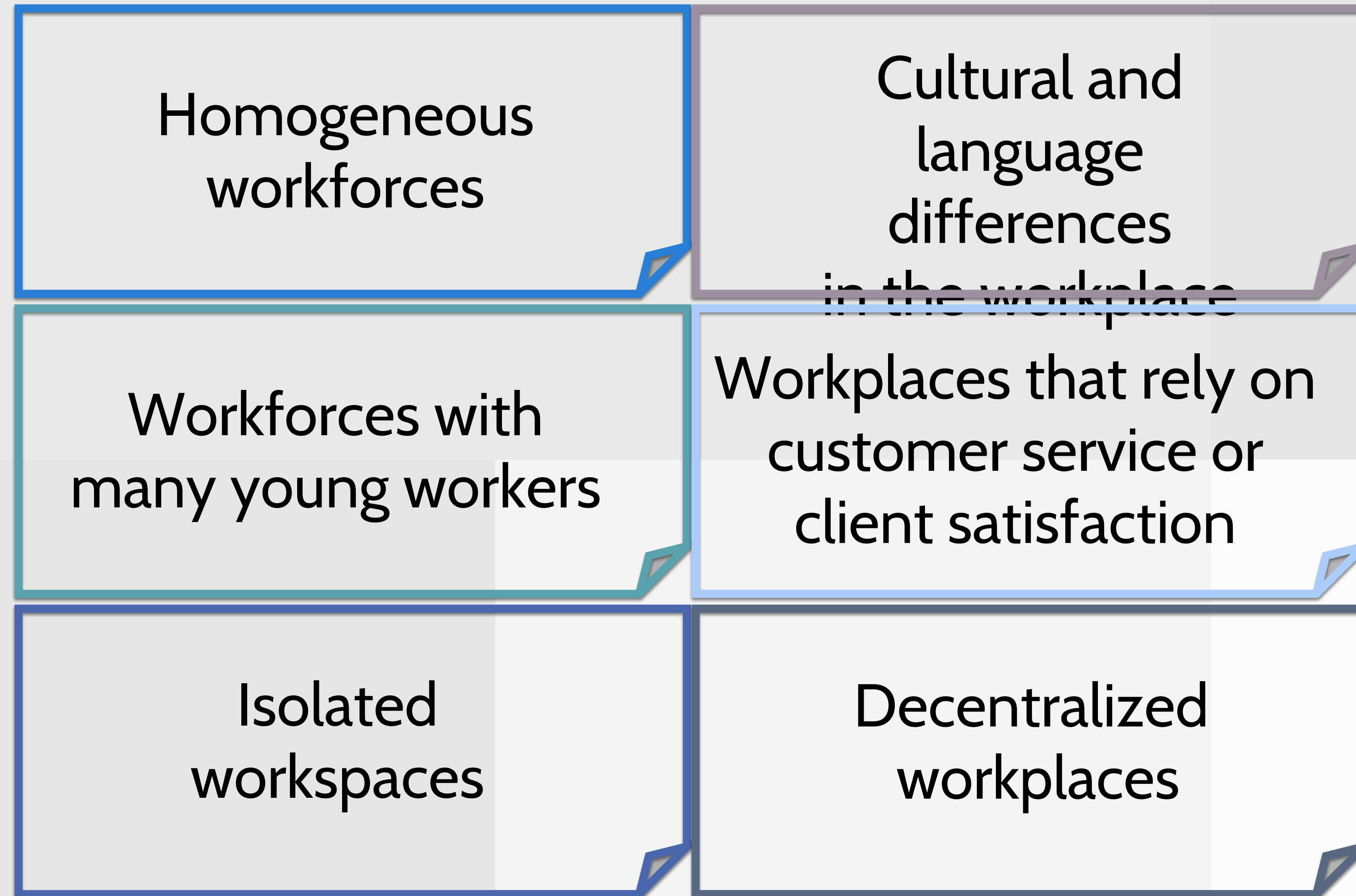
Additional Risk Factors for Harassment

Workplaces where work is monotonous or consists of low-intensity tasks

Workplaces with significant power disparities

Workplace cultures that tolerate or encourage alcohol consumption

Coarsened social discourse outside the workplace

Chart on Risk Factors

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Risk Factor	Risk Factor Indicia	Why This is a Risk Factor for Harassment	Risk Factor-Specific Strategies to Reduce Harassment*
Homogenous workforce	Historic lack of diversity in the workplace Currently only one minority in a work group (*e.g.*, team, department, location)	Employees in the minority can feel isolated and may actually be, or at least appear to be, vulnerable to pressure from others. Employees in the majority might feel threatened by those they perceive as "different" or "other," or might simply be uncomfortable around others who are not like them.	Increase diversity at all levels of the workforce, with particular attention to work groups with low diversity. Pay attention to relations among and within work groups.
Workplaces where some employees do not conform to workplace norms	"Rough and tumble" or single-sex-dominated workplace cultures Remarks, jokes, or banter that are crude, "raunchy," or demeaning	Employees may be viewed as weak or susceptible to abuse. Abusive remarks or humor may promote workplace norms that devalue certain types of individuals.	Proactively and intentionally create a culture of civility and respect with the involvement of the highest levels of leadership. Pay attention to relations among and within work groups.
Cultural and language differences in the workplace	Arrival of new employees with different cultures or nationalities Segregation of employees with different cultures or nationalities	Different cultural backgrounds may make employees less aware of laws and workplace norms. Employees who do not speak English may not know their rights and may be more subject to exploitation. Language and linguistic characteristics can play a role in harassment.	Ensure that culturally diverse employees understand laws, workplace norms, and policies. Increase diversity in culturally segregated workforces. Pay attention to relations among and within work groups.
Coarsened Social Discourse Outside the Workplace	Increasingly heated discussion of current events occurring outside the workplace	Coarsened social discourse that is happening outside a workplace may make harassment inside the workplace more likely or	Proactively identify current events-national and local-that are likely to be discussed in the workplace. Remind the workforce of the

A Holistic Harassment Prevention Effort

Leadership
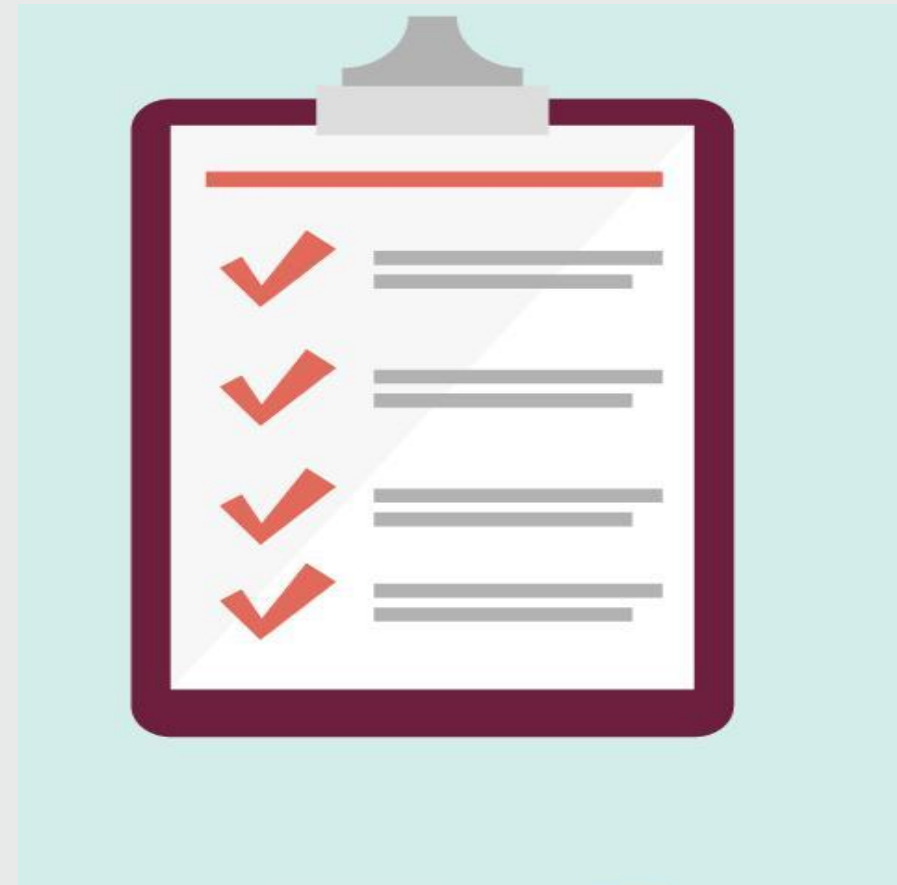
Policy

Reporting Procedures

Training

Creativity

Anti-Harassment Policies

- Drafted in **simple** and **clear** language

- Clear explanation of **prohibited** conduct, including examples

- Protection against **retaliation** for employees who make complaints or participate in the investigation

- Clearly described **complaint process** with **multiple, accessible avenues** of complaint and a **prompt, thorough**, and **impartial** investigation

- Assurance that the employer will protect the **confidentiality** of harassment complaints to the extent possible

- Assurance that the employer will take **immediate and proportionate** corrective action and respond appropriately to behavior

Checklist on Effective Harassment Prevention Policies

→→→

Checklist Two: An Anti-Harassment Policy

An anti-harassment policy is a key component of a holistic harassment prevention effort. Check the box below if your anti-harassment policy contains the following elements:

- ❑ An unequivocal statement that harassment based on *any* protected characteristic will not be tolerated
- ❑ An easy-to-understand description of prohibited conduct, including examples
- ❑ A description of a reporting system - available to employees who experience harassment as well as those who observe harassment - that provides multiple avenues to report, in a manner easily accessible to employees
- ❑ A statement that the reporting system will provide a prompt, thorough, and impartial investigation
- ❑ A statement that the identity of an individual who submits a report, a witness who provides information regarding a report, and the target of the complaint, will be kept confidential to the extent possible consistent with a thorough and impartial investigation
- ❑ A statement that any information gathered as part of an investigation will be kept confidential to the extent possible consistent with a thorough and impartial investigation
- ❑ An assurance that the employer will take immediate and proportionate corrective action if it determines that harassment has occurred
- ❑ An assurance that an individual who submits a report (either of harassment experienced or observed) or a witness who provides information regarding a report will be protected from retaliation from co-workers and supervisors
- ❑ A statement that any employee who retaliates against any individual who submits a report or provides information regarding a report will be disciplined appropriately
- ❑ Is written in clear, simple words, in all languages commonly used by members of the workforce

Reporting and Investigation Procedures

- **Well-resourced** with **well trained** investigators

- Takes complaints **seriously** and offers a **supportive environment**

- **Protects against retaliation** and **keeps information confidential** to the extent possible

- Provides **timely responses and investigations**

- Is **fair** to all parties

*Consider **testing** your procedures
to see how well they work in **practice.***

Checklist on *Reporting Procedures*

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<u>Checklist Three: A Harassment Reporting System and Investigations</u>

A reporting system that allows employees to file a report of harassment they have experienced or observed, and a process for undertaking investigations, are essential components of a holistic harassment prevention effort.

Check the box below if your anti-harassment effort contains the following elements:

☐ A fully-resourced reporting process that allows the organization to respond promptly and thoroughly to reports of harassment that have been experienced or observed

☐ Employer representatives who take reports seriously

☐ A supportive environment where individuals feel safe to report harassing behavior to management

☐ Well-trained, objective, and neutral investigators

☐ Timely responses and investigations

☐ Investigators who document all steps taken from the point of first contact and who prepare a written report using guidelines to weigh credibility

☐ An investigation that protects the privacy of individuals who file complaints or reports, individuals who provide information during the investigation, and the person(s) alleged to have engaged in harassment, to the greatest extent possible

☐ Mechanisms to determine whether individuals who file reports or provide information during an investigation experience retribution, and authority to impose sanctions on those who engage in retaliation

☐ During the pendency of an investigation, systems to ensure individuals alleged to have engaged in harassment are not "presumed guilty" and are not "punished" unless and until a complete investigation determines that harassment has occurred

☐ A communication of the determination of the investigation to all parties and, where appropriate, a communication of the sanction imposed if harassment was found to have occurred

44

Training, Oh Training

Traditional Training, Standing Alone, Is Not Enough

46

Problems with Traditional Harassment Prevention Training

There is some really **bad training** out there**.**

Training is sometimes done primarily to **avoid legal liability**.

Training is often done in a **vacuum**, not as part of a **holistic harassment prevention effort**.

Effective Training

Compliance training is critical.

Effective compliance training has certain essential components.

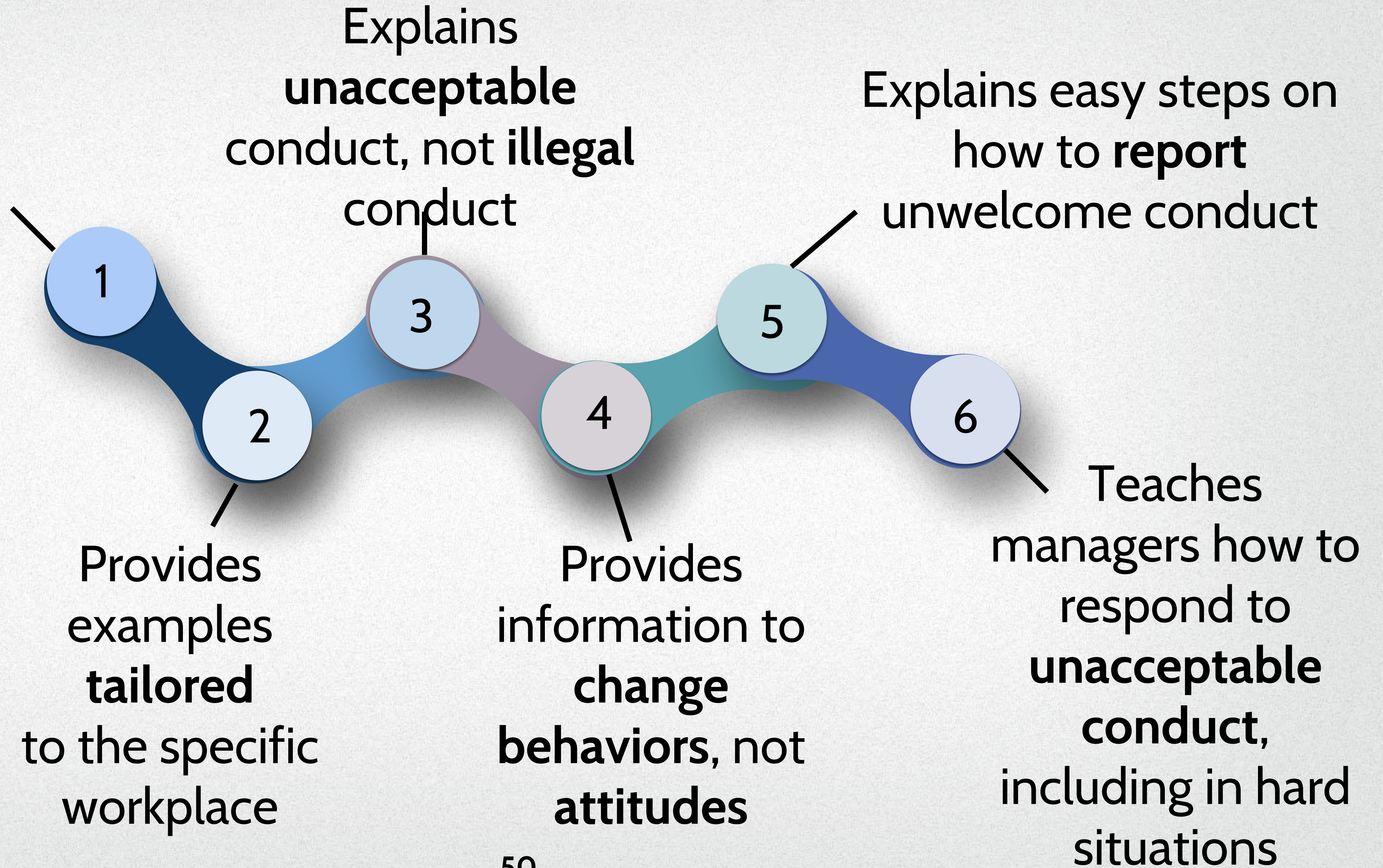There are other types of effective training worth exploring.

"Compliance training is not training to change your mind, it's training to keep your job."

-Jonathan Segal, Select Task Force Member

Good Compliance Training

Uses a **live, interactive** trainer

1

Provides examples **tailored** to the specific workplace

2

Explains **unacceptable** conduct, not **illegal** conduct

3

Provides information to **change behaviors**, not **attitudes**

4

Explains easy steps on how to **report** unwelcome conduct

5

Teaches managers how to respond to **unacceptable conduct**, including in hard situations

6

Checklist on Compliance Training

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Checklist Four: Compliance Training

A holistic harassment prevention effort provides training to employees regarding an employer's policy, reporting systems and investigations. Check the box if your organization's compliance training is based on the following structural principles and includes the following content:

Structural Principles □ Supported at the highest levels

□ Repeated and reinforced on a regular basis

□ Provided to all employees at every level of the organization

□ Conducted by qualified, live, and interactive trainers

□ If live training is not feasible, designed to include active engagement by participants

□ Routinely evaluated and modified as necessary

Content of Compliance Training for All Employees □ Describes illegal harassment, and conduct that, if left unchecked, might rise to the level of illegal harassment

□ Includes examples that are tailored to the specific workplace and the specific workforce

□ Educates employees about their rights and responsibilities if they experience conduct that is not acceptable in the workplace

□ Describes, in simple terms, the process for reporting harassment that is experienced or observed

□ Explains the consequences of engaging in conduct unacceptable in the workplace

Content of Compliance Training for Managers and First-line Supervisors □ Provides easy-to-understand and realistic methods for dealing with harassment that they observe, that is reported to them, or of which they have knowledge or information, including description of sanctions for failing to use such methods

□ Provides clear instructions on how to report harassing behavior up the chain of command, including description of sanctions for failing to report

□ Encourages managers and supervisors to practice "situational awareness" and assess the workforces within their responsibility for risk factors of harassment

Other Trainings that Hold Promise....

Workplace Civility Training
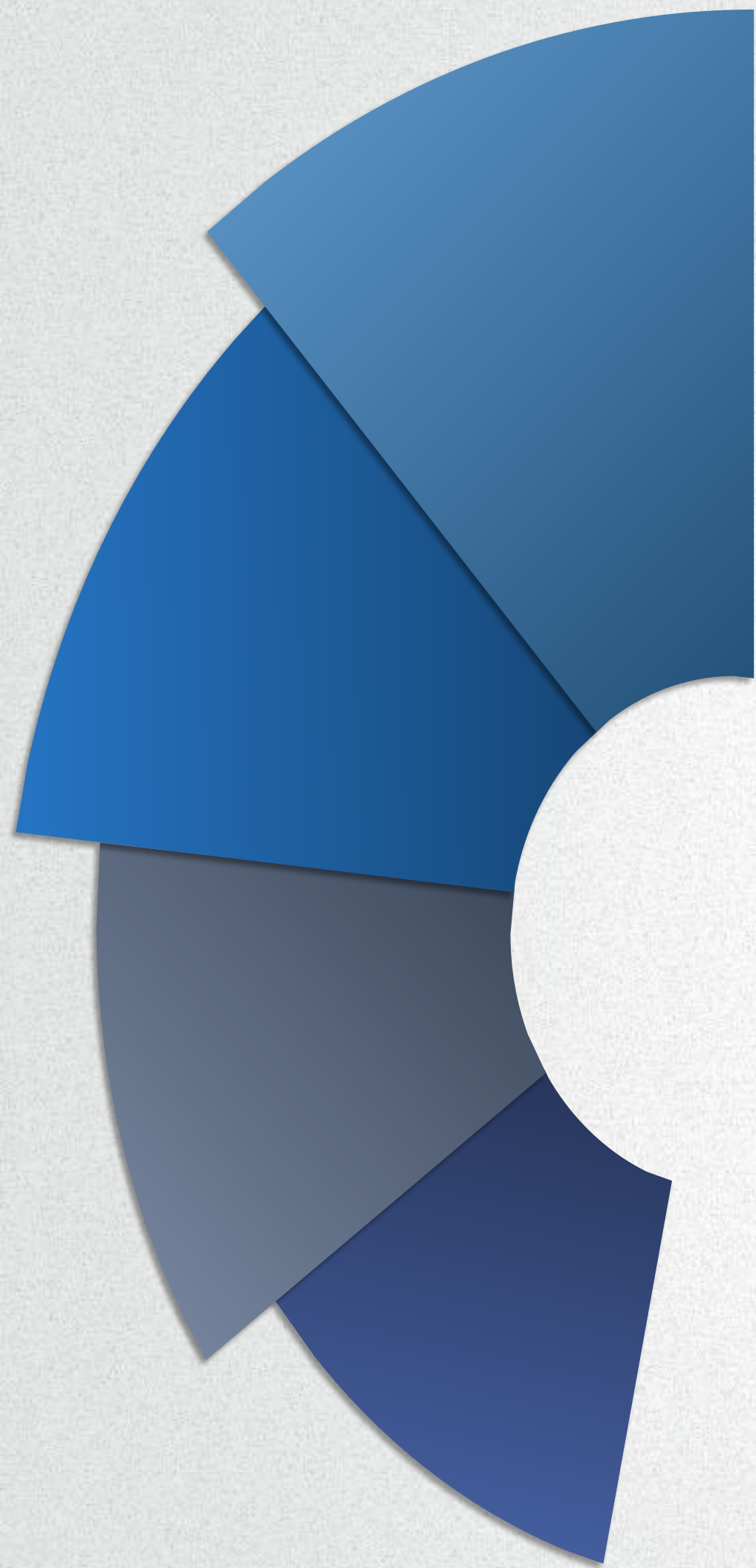
Focused on creating a **civil** and **respectful** workplace for all.

Not focused on **status-based** characteristics.

Teaches employees to increase their **self-awareness** of **respectful** behavior.

Provides employees with the **skills** to control their **actions** and **reactions** to people and situations.

53

"Workplace incivility might act as a sort of 'gateway drug' to more egregious forms of abuse, including illegal harassment."

-Professor Lilia Cortina, University of Michigan
Testimony to the Select Task Force on the Study of Workplace Harassment

Bystander Intervention Training
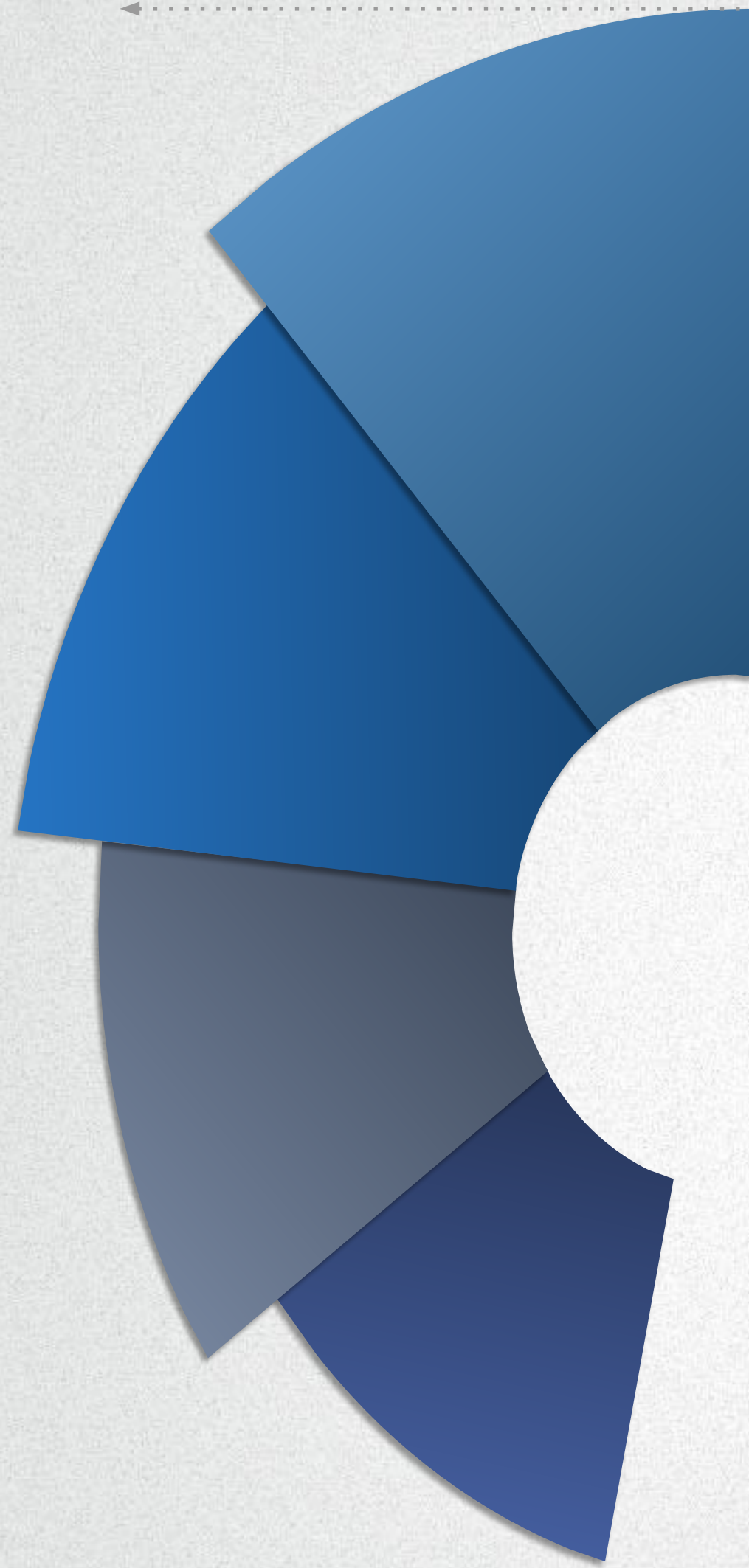
Deployed frequently on **college campuses** to **reduce** sexual assault.

Teaches students to recognize **warning signs** of **sexual assault**.

Creates a sense of **collective responsibility and confidence to intervene.**

Empowers students by giving them the realistic, **actionable options for intervention.**

What would this look like in the workplace?

Unacceptable Behavior

Workers would know what behavior is **unacceptable**. (Compliance Training)

Collective Responsibility

Workers would feel **collectively responsible** for having a harassment-free workplace

Tools and Training

Workers would be given **tools and training** for intervention, **specific** to that workplace.

Rewards, not Retaliation

Workers who **stop harassment** would be **rewarded**, not retaliated against.

EEOC Can Help Create Holistic Prevention Efforts

- EEOC agreements in the **private sector** (settlements, conciliations, & consent decrees) and the **federal sector** can require **effective**:
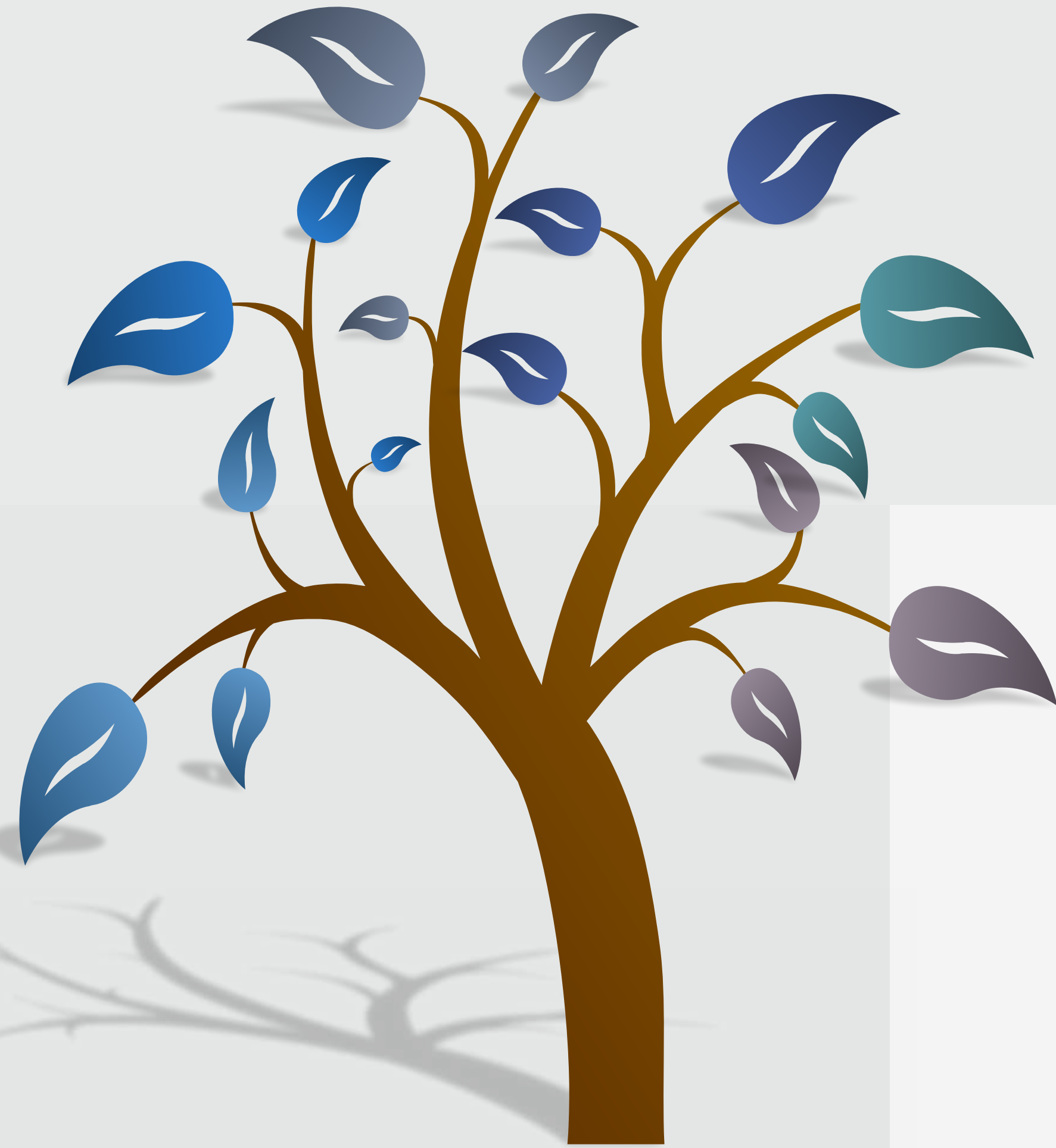 - ➡**policies**
  - ➡**reporting and investigation procedures**
  - ➡**compliance training.**

- The **three checklists** for those aspects of a prevention effort, as well as the **checklist on leadership**, can be used in guiding agreements. Get them **here**: https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm

57

EEOC's Role in Encouraging New Training

- EEOC's agreements should always require **effective compliance training.**

- EEOC can also encourage employers to use **workplace civility training** and **bystander intervention training.**

- EEOC can also encourage employers to work with **researchers** to study their workplaces pre and post training **to see what harassment prevention efforts are effective.**

58

One Final Big Idea
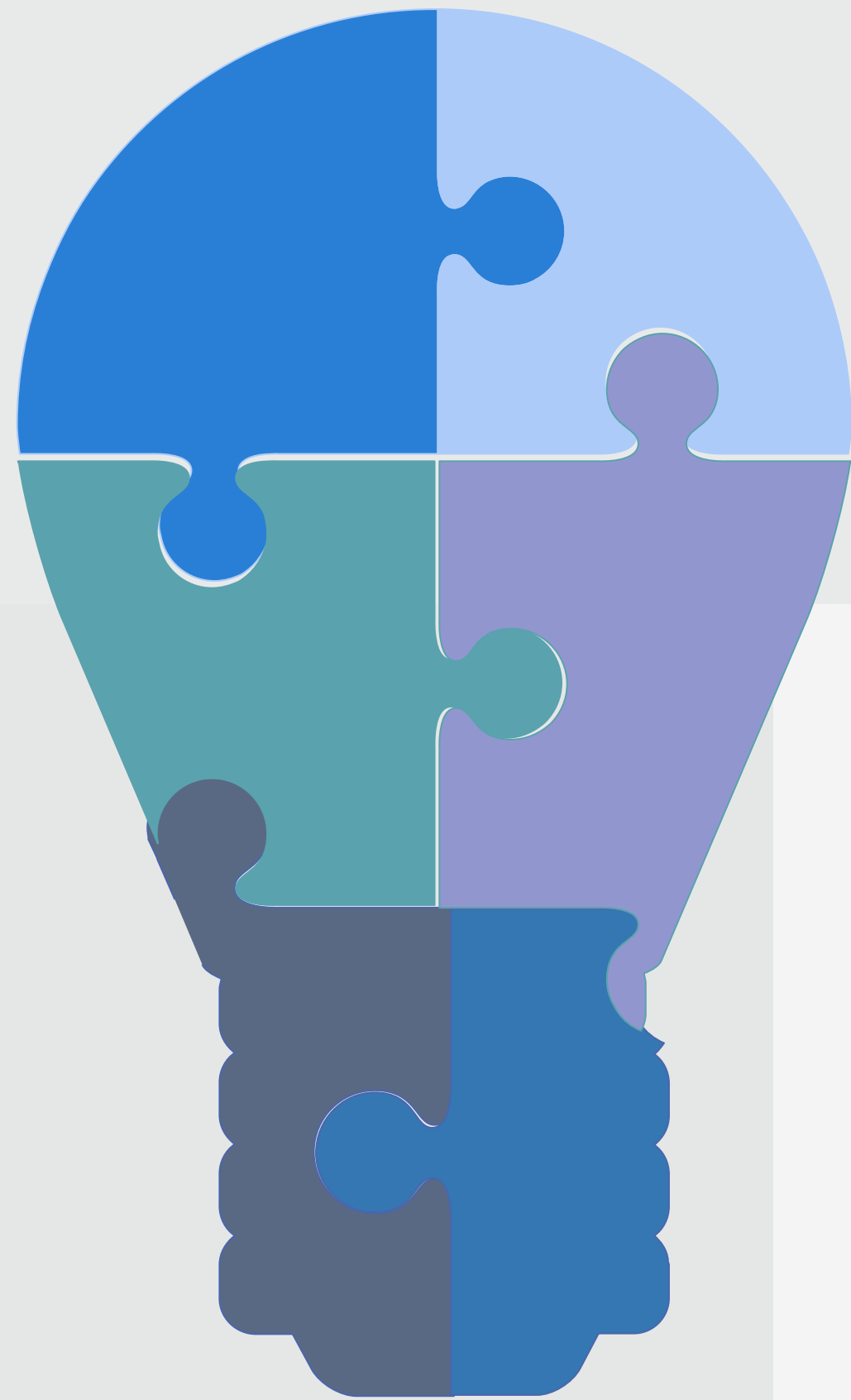
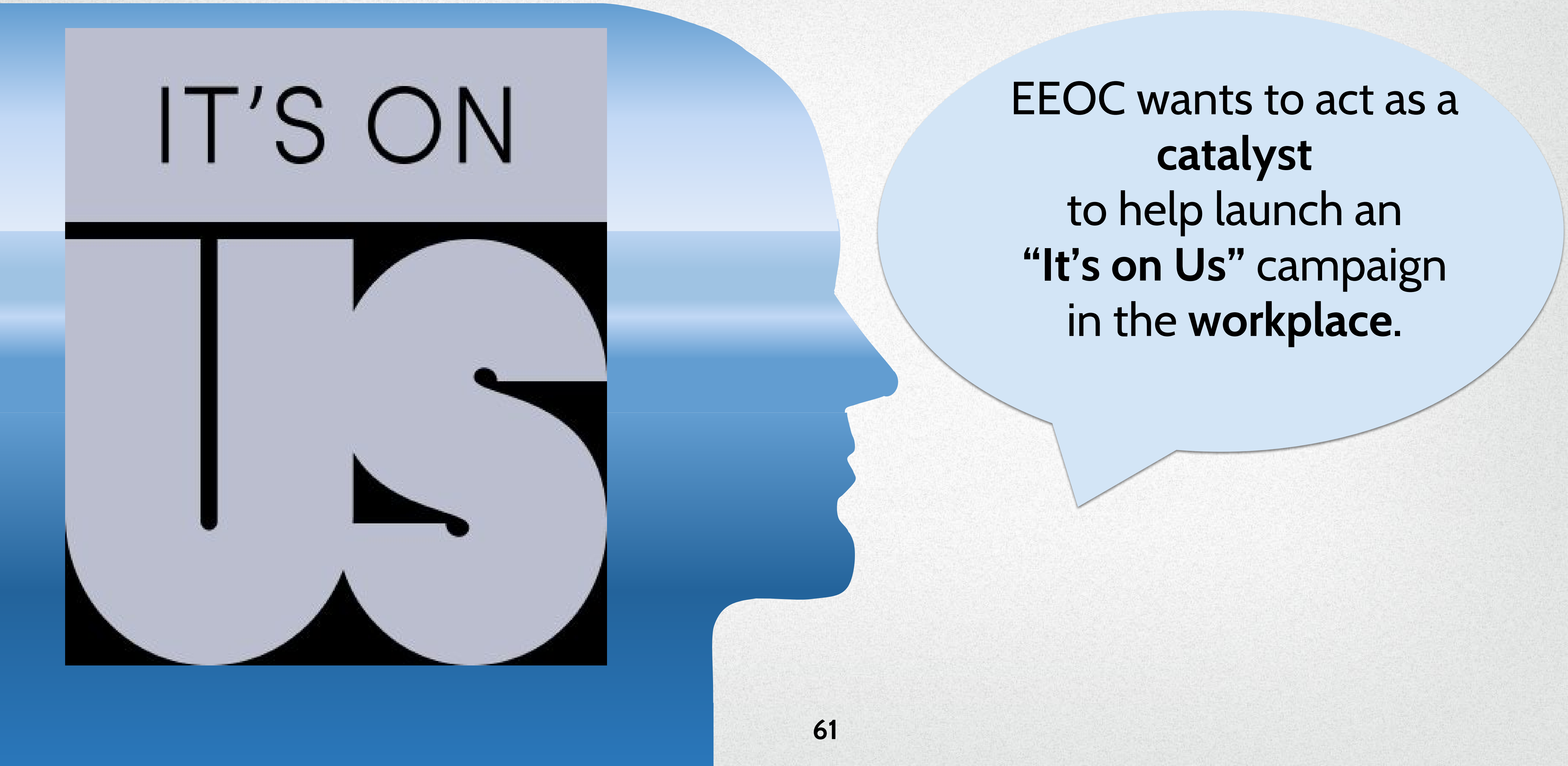An It's on Us campaign in the workplace.

IT'S ON

US

It's On Us Campaign

- It's On Us is an **awareness campaign** aimed at **ending sexual assault** on **college campuses.**

- About **400,000 people** have taken the It's On Us pledge and students have hosted almost **2,000 events** on over 500 college campuses. The campaign has **95 partners**, including businesses, non-profit organizations, and sports organizations.

Questions and Comments?