

ETHICS (etc.) UPDATE

NEW JERSEY LEAGUE OF MUNICIPALITIES

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THE AGENDA

- FINANCIAL DISCLOSURE FORMS
- THE “NEWER” HAMMER OF THE ETHICS LAWS
- PREVENTING SEXUAL HARASSMENT IN THE WORKPLACE

“The reputation of a thousand years is determined by the conduct of one hour.”

– Japanese proverb

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FINANCIAL DISCLOSURE FORMS

- “N.J.S.A. 40A:9-22.6.a provides that “[l]ocal government officers shall annually file a financial disclosure statement.” N.J.S.A. 40A:9-22.6.b provides that statements shall be filed on or before April 30th each year, except that each local government officer shall file a financial disclosure statement within 30 days” of taking office.
- For each Local Government Office (LGO) position one holds
- Local Finance Notices
 - LFN 2020-3

WHO IS AN LGO? (who has to file)

- “N.J.S.A. 40A:9-22.3.g(4) of the LGEL concerning the definition of managerial executive was amended in August 2015. The DLGS has adopted Rules and Regulations, effective March 6, 2017 and December 4, 2017, defining managerial executive employees for FDS filing purposes. N.J.A.C. 5:35-2.1 states that (a) Individuals with the following titles or responsibilities equivalent to such titles shall be considered managerial executives under the definition of “local government officer” set forth in N.J.S.A. 40A:9-22.3.g(4):

Positions Specifically Required to File an FDS per N.J.A.C. 5:35-2.1

- 1. Chief of Staff;
- 2. Business administrator;
- 3. Municipal or county manager;
- 4. Chief financial officer;
- 5. Treasurer
- 6. Municipal clerk or clerk of governing body;
- 7. Department heads, including executive directors, division directors, deputy directors, and assistant directors;



But wait!

There's more!

Positions Specifically Required to File an FDS per N.J.A.C. 5:35-2.1

- 8. Chief or acting chief of police, part-paid fire departments, and paid fire departments, or
- “officer in charge” in lieu of a chief or acting chief title;
- 9. Deputy chiefs and assistant chiefs of police, part-paid fire departments, and paid fire departments;
- 10. Chief or acting chief of a beach patrol;
- 11. Municipal and county engineer;
- 12. Health officer;
- 13. Municipal attorney and county counsel;
- 14. Planning board or zoning board of adjustment attorney;



But Wait...
**THERE'S
MORE!**

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Positions Specifically Required to File an FDS per N.J.A.C. 5:35-2.1

- 15. Planning board or zoning board of adjustment engineer;
- 16. Local government agency attorney;
- 17. Local government agency engineer;
- 18. Municipal and county emergency management coordinators;
- 19. Trustees on a library board of trustees;
- 20. Municipal prosecutor;
- 21. County prosecutors;
- 22. County agriculture board members;

Positions Specifically Required to File an FDS per N.J.A.C. 5:35-2.1

- 23. County college board of trustees;
- 24. Board of recreation commissioners;
- 25. Local ethics board members;
- 26. Rent leveling board members;
- 27. Special taxing district executive director/director and its commissioners;
- 28. Joint insurance fund executive director/director and its commissioners;

Positions Specifically Required to File an FDS per N.J.A.C. 5:35-2.1

- 29. Local pension board commissioners;
 - 30. Tax collector;
 - 31. Qualified purchasing agent;
 - 32. Construction official; and
 - 33. Tax assessor.
- Local governments are without statutory authority to expand the definition of local government officers; therefore, please do not include individuals on the roster who do not hold positions as defined in N.J.S.A. 40A:9-22.3.g or the adopted rules at N.J.A.C. 5:35-2.1.



Elements of New Jersey Ethics Statutes

- **C**onflicts of Interest
- Use of **I**nformation for financial gain
- Receipt or solicitation of **G**ifts
- **A**buse of Office/Unwarranted privilege or benefit
- **R**epresentation

C.I.G.A.R.

CONFLICTS

When is there a conflict of interest?

- When a private interest can benefit from your actions.
- When a private interest could interfere with official duties.

Conflicts of interest involve the concepts of *benefit* and *bias*.

Questions to ask when evaluating a potential conflict of interest include:

- Will your interests benefit as a result of your official action?
- Would a reasonable person conclude that a private or personal interest impairs your independent and impartial judgment in the exercise of your official duties?

State of Washington Gov. Ethics

ABUSE OF OFFICE UNWARRANTED PRIVILEGES

- N.J.S.A. 40A: 9-22.5 c

No local government officer or employee shall use or attempt to use his official position to secure **unwarranted privileges** or advantages for himself or others.

ABUSE OF OFFICE UNWARRANTED PRIVILEGES - CRIMINAL

- N.J.S.A. 2C:30-2
- Official Misconduct
- A public servant is guilty of official misconduct when, with purpose to obtain a benefit for himself or another or to injure or to deprive another of a benefit:

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OFFICIAL MISCONDUCT

- a. He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized or he is committing such act in an unauthorized manner; or
- b. He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

CONSEQUENCES - PENSION

- 25 states have adopted legislation to revoke pensions of public officials and employees if convicted of a crime related to their official duties
- Some states require a felony conviction, other states “any crime” related to official duties or “less than honorable conduct” [WVA]

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CONSEQUENCES OF ETHICS VIOLATIONS

- Ethics – violations ...so what?
- Local Finance Board (municipal and county)
- Criminal statutes
- Other laws (LAD, Title VII, anti-trust etc.)

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CONSEQUENCES

LOCAL GOV'T ETHICS	CRIMINAL STATUTES
LOCAL FINANCE BOARD	COURT – JUDGE/JURY
FINES – UP TO \$500 PER OCCURENCE	FINES – DEPENDING ON DEGREE OF CRIME – CAN BE OVER \$20,000
	RESTITUTION
	JAIL TIME
	NEVER HOLD GOV'T OFFICE
	PERMANENT RECORD
	LOSS OF PENSION

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CONSEQUENCES - PENSION

- New Jersey – NJSA 43:1-1.3
- **43:1-3.1 Forfeiture of pension, retirement benefit for conviction of certain crimes; definition, certain.**

2. a. A person who holds or has held any public office, position, or employment, elective or appointive, under the government of this State or any agency or political subdivision thereof, who is convicted of any crime set forth in subsection b. of this section, or of a substantially similar offense under the laws of another state or the United States which would have been such a crime under the laws of this State, which crime or offense involves or touches such office, position or employment, shall forfeit all of the pension or retirement benefit earned as a member of any State or locally-administered pension fund or retirement system in which he participated at the time of the commission of the offense and which covered the office, position or employment involved in the offense. As used in this section, a crime or offense that "involves or touches such office, position or employment" means that the crime or offense was related directly to the person's performance in, or circumstances flowing from, the specific public office or employment held by the person.

LOSS OF PENSION – INCLUDED CRIMES - NJ

- b. Subsection a. of this section applies to a conviction of any of the following crimes:
 - (1) Paragraph (4) of subsection a. of N.J.S.2C:13-5, criminal coercion;
 - (2) N.J.S.2C:20-4, theft by deception, if the amount involved exceeds \$10,000;
 - (3) Subsection d. of N.J.S.2C:20-5, theft by extortion;
 - (4) N.J.S.2C:20-9, theft by failure to make required disposition of property received, if the amount involved exceeds \$10,000;

LOSS OF PENSION – INCLUDED CRIMES - NJ

- (5) N.J.S.2C:21-10, commercial bribery;
- (6) Section 3 of P.L.1994, c.121 (C.2C:21-25), money laundering;
- (7) Section 97 of P.L.1999, c.440 (C.2C:21-34), false contract payment claims;
- (8) N.J.S.2C:27-2, bribery in official matters;
- (9) N.J.S.2C:27-3, threats and other improper influence in official and political matters;
- (10) Section 100 of P.L.1999, c.440 (C.2C:27-9), unlawful official business transaction where interest is involved;
- (11) Section 5 of P.L.2003, c.255 (C.2C:27-10), acceptance or receipt of unlawful benefit by public servant for official behavior;
- (12) Section 6 of P.L.2003, c.255 (C.2C:27-11), offer of unlawful benefit to public servant for official behavior;
- (13) N.J.S.2C:28-1, perjury;

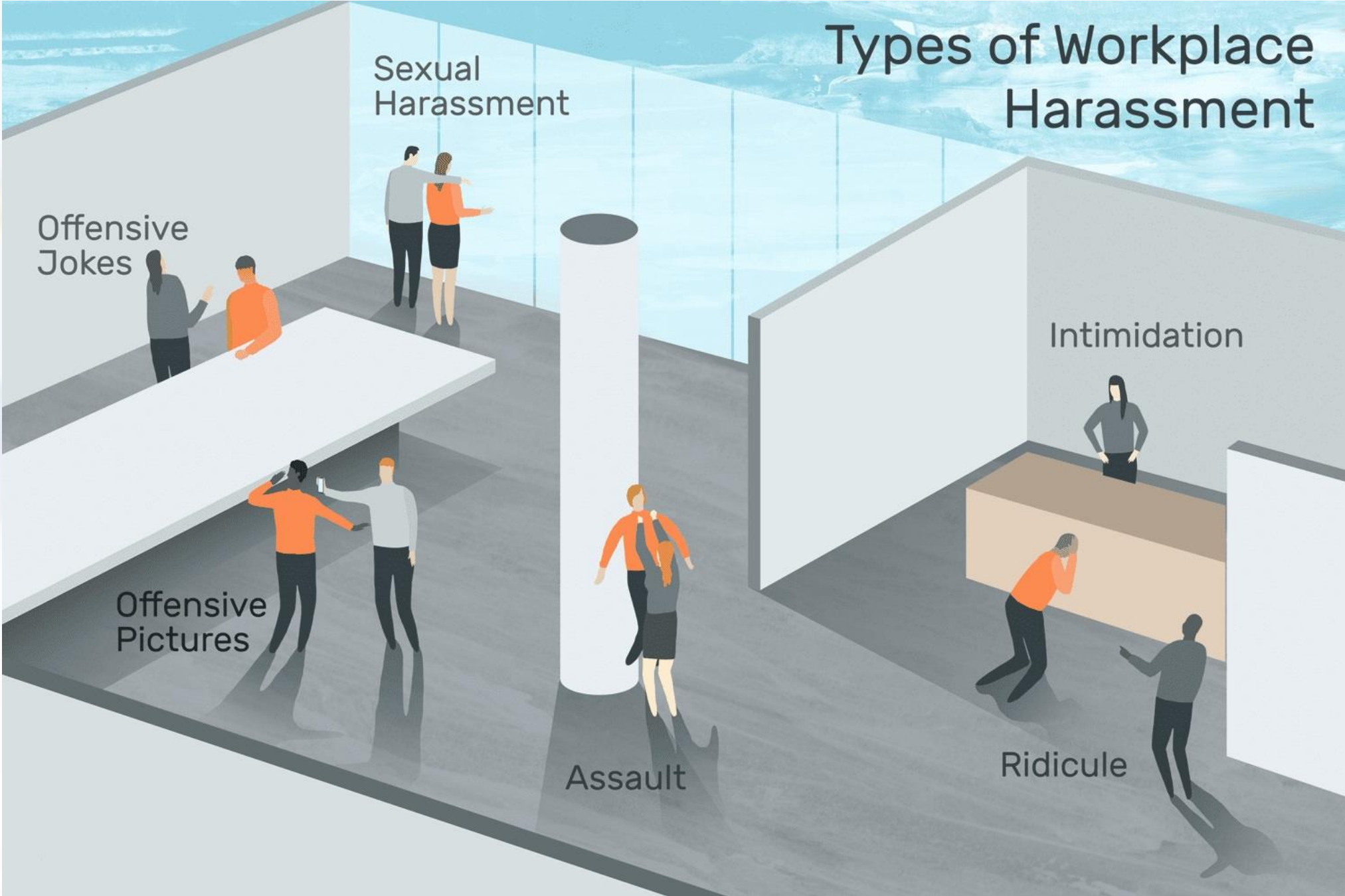
LOSS OF PENSION

- c.A court of this State shall enter an order of pension forfeiture pursuant to this section:
- (1)Immediately upon a finding of guilt by the trier of fact or a plea of guilty entered in any court of this State unless the court, for good cause shown, orders a stay of the pension forfeiture pending a hearing on the merits at the time of sentencing; or
- (2)Upon application of the county prosecutor or the Attorney General, when the pension forfeiture is based upon a conviction of an offense under the laws of another state or of the United States. An order of pension forfeiture pursuant to this paragraph shall be deemed to have taken effect on the date the person was found guilty by the trier of fact or pled guilty to the offense

LOSS OF PENSION

- No court shall grant a stay of an order of pension forfeiture pending appeal of a conviction or pension forfeiture order unless the court is clearly convinced that there is a substantial likelihood of success on the merits. If the conviction be reversed or the order of pension forfeiture be overturned, his pension rights and benefits shall be restored from the date of pension forfeiture.
- e. Nothing in this section shall be deemed to preclude the authority of the board of trustees of any State or locally-administered pension fund or retirement system created under the laws of this State from ordering the forfeiture of all or part of the earned service credit or pension or retirement benefit of any member of the fund or system for misconduct occurring during the member's public service pursuant to the provisions of P.L.1995, c.408 (C.43:1-3 et seq.), including in a case where the court does not enter an order of forfeiture pursuant to this section.

Types of Workplace Harassment



1. 60 Percent Of Women Have Received Unwanted Sexual Attention At Work
2. 1 In 3 Women Have Been Sexually Harassed At Work
3. Over 90 Percent Of Women In The Service Industry Have Been Sexually Harassed At Work
4. 70 Percent Of Women Don't Report Their Harassment
5. Over 43,000 Workplace Rapes And Assaults Occur Every Year

Almost always, sexual harassment is about power. It is about an individual controlling or threatening another individual. In most cases, it is an abuse of power. It is wrong, and it is illegal.

*Lunenber, Sam Houston State University
"Sexual Harassment: An Abuse of Power"*

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PREVENTING SEXUAL HARASSMENT IN THE WORK PLACE

- Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964.
- Harassment is unlawful when:
 - Enduring the offensive conduct becomes a condition of continued employment, or
 - The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile or abusive (courts have “evolved” regarding their definition of pervasive).

SEXUAL HARASSMENT IS SO '90s

- First sexual harassment training
- The JIF/MEL online training
- ME Too and similar movements

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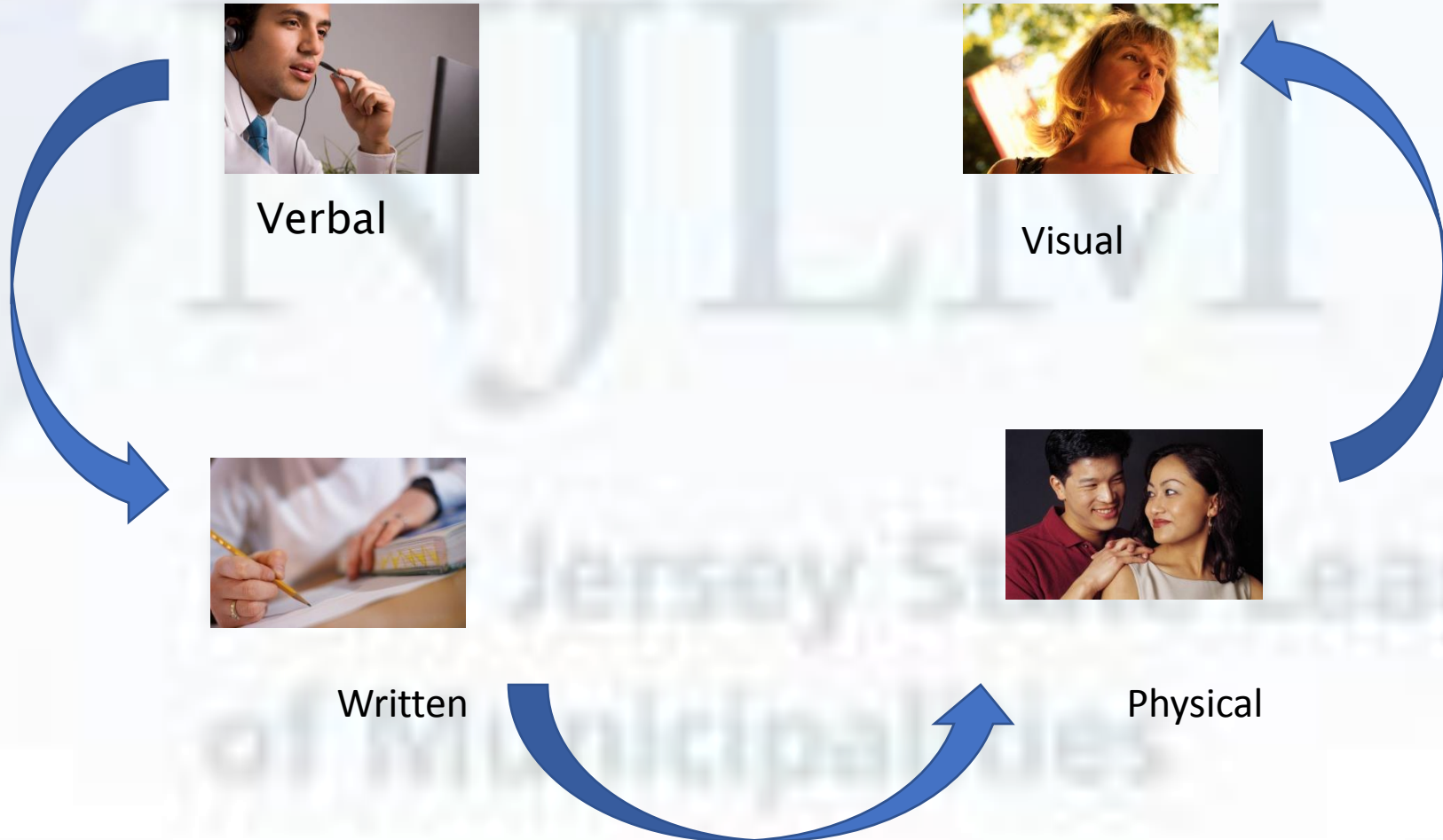
SEXUAL HARASSMENT

- Sexual harassment is:
 - Unwelcome, unwanted, or offensive sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
 - Submission to the conduct is made either explicitly or implicitly a term or condition of the individual's employment;
 - The conduct is unwelcome, unwanted, or offensive and has the purpose or effect of unreasonably interfering with an individual's work performance, or creating an intimidating, hostile or offensive working environment

MAIN TYPES OF SEXUAL HARASSMENT

- Hostile work environment
- Quid Pro Quo - Employment decisions or expectations-hiring decisions, promotions, salary increases, work assignments or performance evaluations are based on an employee's willingness to grant or deny sexual favors

Four Groups of Sexual Harassment



SEXUAL HARASSMENT EXAMPLES

- NSFW
- Big Blue
- The South Park example
- Social Media (sexting, stalking)
- Fox Rothschild/Governor's Office
- The Weinstein "defense"

CREATING THE “NON-HOSTILE” ENVIRONMENT

- Make sure there is a clear and consistent policy (mandated by many insurers; EPL policies)
- Clear investigation protocol
- Make sure your work environment feels like a safe work environment
- **DO SOMETHING!**

Handling the Sexual Harassment Complaint

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

Dangerous Words

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

- ✓ It's just teasing—no big deal.
- ✓ The people in our MUNICIPALITY would never do...
- ✓ I know he/she didn't mean anything like that.
- ✓ It's your fault for dressing so provocatively.
- ✓ You need to learn to handle these things.
- ✓ Just ignore it.
- ✓ He puts his arms around everyone.
- ✓ Why can't you learn to accept a compliment?
- ✓ You must have wanted it, otherwise you would have told him no.

- ✓ That's how they do things where he comes from.
- ✓ It's just a joke. Lighten up.
- ✓ No one's filed a charge so our hands are tied.
- ✓ We've never had a complaint, so we don't have a problem.
- ✓ This kind of behavior is all part of growing up.
- ✓ It's a matter of hormones we can't control that
- ✓ If we had to discipline every student who used bad language we'd never get anything else done.
- ✓ It's just a prank that got out of hand.

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REVIEW

- File your Financial Disclosure Statements on time
- Don't do the crime – it isn't worth it
- Think before you act or speak
- Create safe work environments

