

A Practical Training Guide: How to Identify, Address and Prevent Sexual Harassment & Discrimination

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SCOPE OF TRAINING

- ▶ This training will provide you with information on:
 - ▶ Identifying unlawful discrimination, harassment, and sexual harassment.
 - ▶ How to report suspected unlawful discrimination, harassment, and sexual harassment.
 - ▶ Preventing retaliation against whistleblowers.
 - ▶ Consequences for unlawful discrimination, harassment, and sexual harassment.
 - ▶ Consequences for making false reports



Uber board member resigns after making a joke about women at a company meeting on sexism

21st Century Fox Pressed by Investment Group to Overhaul Board



Bill Cosby's retrial may be the first real test of the power of #MeToo



Former Aide Accuses Cuomo of Sexual Harassment

Lindsey Boylan, who is now running for Manhattan borough president, said the governor would often discuss her physical appearance when she worked for him.

FBI won't 'sidestep' sexual misconduct claims, director says

Weinstein Company hit with lawsuit following sexual assault allegations

Actor Dominique Huett files \$5m civil suit against film company 'abetting' Harvey Weinstein, alleging board members knew about misconduct

Aziz Ansari Steps Out with Chris Rock for Rare Appearance After Sexual Harassment Allegation



SPORTS

How the #MeToo Movement Is About to Change Pro Sports

NHL, NHLPA launch sexual assault, domestic violence training initiative



ESPN Sued Over Discrimination And Sexual Harassment Allegations

NCAA Will Require Athletes And Coaches To Complete Sexual Violence Education

Georgia Southern women's soccer coach let go over sexual harassment complaint



Ex-NHL player Dave 'Tiger' Williams charged with sexual assault

The NFL is reportedly investigating Buccaneers QB Jameis Winston over allegation he groped an Uber driver

Last Call: Illinois Employers Must Provide Sexual Harassment Training by Year End

Monday, November 30, 2020

* NEWS

04/11/2018, 11:08am

For fifth time in six months, aldermen strengthen sexual harassment ordinance

Open letter alleges rampant sexual harassment in Illinois politics

Sexual Harassment Becomes Hot Topic In Springfield

CRAIN'S
CHICAGO BUSINESS.

CBS Chicago

02/07/2018, 06:48pm

10 women accuse Northwestern journalism professor of sexual harassment, bullying

* NEWS

02/20/2018, 03:05pm

Three women tell harrowing stories of sexual harassment at Ford Chicago plants

Chicago Tribune

After sex harassment allegation, Silverstein loses Illinois Senate seat

Megachurch pastor Bill Hybels resigns from Willow Creek after women allege misconduct

CHICAGO SUN-TIMES

CHICAGO TONIGHT

Illinois Takes On Sexual Harassment

- ▶ “Municipal corporations” and “governmental units or agencies” are subject to the requirements of the Illinois Human Rights Act.
- ▶ Engaging in sexual harassment is a violation of the Human Rights Act as well as other laws and internal policies. 775 ILCS 5/2-102(D).
- ▶ **You are also prohibited from engaging in harassment or discrimination** as defined by the Human Rights Act. The Human Rights Act forbids discrimination and harassment on the basis of someone’s actual or perceived membership in one or more of the following protected classes:
 - ▶ Age; Ancestry; Citizenship Status; Color; Disability; Marital Status; Military Status; National Origin; Pregnancy; Race; Religion; Sex; Sexual Orientation; Unfavorable Discharge from Military Service.

IDENTIFYING SEXUAL HARASSMENT & DISCRIMINATION

- ▶ The Illinois Human Rights Act defines sexual harassment as: ***any unwelcome sexual advances, requests for sexual favors or any conduct of a sexual nature when:***
 - ▶ ***Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment;***
 - ▶ ***Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or***
 - ▶ ***Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.***

- ▶ The courts have determined that sexual harassment is a form of discrimination under Title VII of the U.S. Civil Rights Act of 1964, as amended in 1991.
- ▶ Sexual harassment generally involves employment and/or work performance whereas sexual assault is a criminal assault of a sexual nature against another person.
- ▶ To constitute discrimination because of sex, actionable sexual harassment requires showing that the conduct is directed at victim because of his or her gender.

- ▶ Distinction between “equal opportunity jerk” and “harasser”.
- ▶ A supervisor who bullies ALL of his or her employees using gender-neutral language or tactics is not in violation of Title VII because he or she treats men and women equally poorly.
 - ▶ Example: A recent Federal Court decision held that a female employee’s supervisor “had a reputation of being rude to everyone, regardless of the individual’s gender. Although the supervisor’s comments toward and interactions with the employee were rude and inappropriate, they were not different than those directed at male employees and did not in themselves reflect bias based on gender in violation of Title VII of the Civil Rights Act.”

- ▶ Categories of Sexual Harassment include:
 - ▶ **Quid Pro Quo (sexual demands)**
 - ▶ **Hostile Work Environment**

- ▶ Types of Sexual Harassment include:
 - ▶ Verbal/Non-Verbal Harassment
 - ▶ Visual Harassment
 - ▶ Physical Harassment
 - ▶ Textual/Electronic

- ▶ **Verbal**: Sexual innuendos, suggestive comments, insults, humor, and jokes about sex, anatomy or gender-specific traits, sexual propositions, threats, repeated requests for dates, or statements of a sexual nature about other employees, even outside of their presence.
- ▶ **Non-verbal**: Suggestive or insulting sounds (whistling), leering, obscene gestures, sexually suggestive bodily gestures, “catcalls”, “smacking” or “kissing” noises.
- ▶ **Visual**: Posters, signs, pin-ups or slogans of a sexual nature, viewing pornographic materials or websites.
- ▶ **Physical**: Touching, unwelcome hugging or kissing, pinching, brushing the body, and coerced sexual act, or actual assault.

Textual/Electronic:

- “Sexting” (electronically sending messages with sexual content including pictures and video);
- Cyber stalking;
- And threats via all forms of electronic communication (e-mail, text messages, on-line postings, blogs, instant messages and social network websites).



SEXUAL ADVANCES AND REQUESTS FOR SEXUAL FAVORS ARE NOT THE ONLY TYPES OF CONDUCT THAT CAN BE SEXUAL HARASSMENT. OTHER CONDUCT OF A SEXUAL NATURE CAN BE PART OF QUID PRO QUO SEXUAL HARASSMENT OR CONTRIBUTE TO A HOSTILE WORK ENVIRONMENT, INCLUDING:

- ▶ Actual or attempted rape or sexual assault
- ▶ Pressure for sexual favors
- ▶ Deliberate touching, leaning over, or cornering
- ▶ Sexual looks or gestures
- ▶ Letters, telephone calls, personal e-mails, texts, or other materials of a sexual nature
- ▶ Pressure for dates
- ▶ Sexual teasing, jokes, remarks, or questions
- ▶ Referring to an adult as a “girl”, “hunk”, “doll”, “babe”, “honey” or other diminutive term
- ▶ Whistling at someone
- ▶ Sexual comments, sexual innuendos, or sexual stories
- ▶ Turning work discussions to sexual topics
- ▶ Asking about sexual fantasies, preferences or history
- ▶ Making sexual gestures with hands or through body movements
- ▶ Sexual comments about a person's clothing, anatomy, or looks
- ▶ Kissing sounds, howling and smacking lips
- ▶ Telling lies or spreading rumors about a person's personal sex life
- ▶ Neck and/or shoulder massage
- ▶ Touching an employee's clothing, hair or body
- ▶ Hanging around a person uninvited
- ▶ Hugging or kissing
- ▶ Patting, stroking, or pinching
- ▶ Touching or rubbing oneself sexually in the presence of another person
- ▶ Standing close to or brushing up against a person
- ▶ Looking a person up and down
- ▶ Sexually suggestive posters, cartoons, or magazines displayed in the workplace or shown to someone
- ▶ Playing sexually suggestive or graphic videos or music

Q: Is sexual harassment only men harassing women?

A: No. Sexual harassment can be done by either a man or a woman.

Q: A municipal resident makes offensive sexual remarks every time he or she visits the municipal office. Is this sexual harassment?

A: If you informed your supervisor about the resident making sexually offensive remarks and your supervisor or the municipality did nothing to handle the situation, then yes, under Illinois law, this type of harassment would be considered third-party sexual harassment.

Q: The guys are going out for a drink after work and ask the female workers to come along. Is this sexual harassment?

A: This is not considered sexual harassment per se but it can be a difficult situation if it leads to any misunderstandings amongst the group.

▣ Q: A fellow employee told me a joke that had mild sexual content. I wasn't offended by it, and we both found the joke to be funny. Today, we both got a memo from our boss saying our conduct was inappropriate and a potential violation of the company's sexual harassment policy. Was the joke harassment?

A: All companies in Illinois have a responsibility to create a safe working environment for all their employees. If a joke was told with sexual connotations and someone overhearing the joke found it to be offensive, it could create a hostile working environment, which is another form of sexual harassment. Either way, telling a dirty joke at work is deemed inappropriate.

Q: Steve regularly leers at Sandra's body. It disorients Sandra to the extent that she sacrifices time and energy to go out of her way to avoid Steve's workstation. Is this sexual harassment?

A: Even though this clearly seems like sexual harassment, because Sandra has not said "no" to this behavior at least once, there has been no violation of the law. Once Steve is made aware of his unwanted behavior, if he continues it, then he will have violated the law.

Q: A co-worker is famous for dirty jokes, sexual comments and leering. It really bothers Mary to the point where she gets headaches by late afternoon after listening to it all day. Mary talks about this with other women in her workplace; but they tell her it doesn't bother them because, "He's all talk and no action." Is this sexual harassment?

A: A co-worker's conduct and comments need not offend all women working with him. If even one worker feels humiliated by persistent and unwelcome conduct, sexual harassment may exist.

Q: Nancy and Isabel work in the same municipal department. Whenever Nancy is near Isabel, she makes a point of touching her or brushing up against her. Isabel doesn't like it and has told Nancy that it upsets her but Nancy persists. Is this sexual harassment?

A: This is clearly sexual harassment. Nancy was told no but persists. Sexual harassment is not limited to heterosexual encounters.

Q: A supervisor has to choose whom to lay off. The male supervisor tells a female worker that if she agrees to go out with him she won't get laid off. Is this sexual harassment?

A. This is an example of quid pro quo harassment. The female worker does not have to agree to this offer in order for it to be considered harassment. That the supervisor has put her in the position at all is already harassment in violation of law.

- ▶ Gender is Irrelevant.
- ▶ Sexual Harassment & Third Parties. Victim does not need to be the person the behavior is directed towards.
- ▶ Behavior is Unwelcome. Challenged behavior may be unwelcome in sense that the victim did not solicit or invite it and considered the conduct offensive.
- ▶ Intent vs. Impact. Intent is NOT relevant.
- ▶ Working Environment. Behavior may extend to other office locations, off-site or electronic messages (emails/texts).
- ▶ Sexual Harassment is Not limited to Co-Workers and Supervisors. Patrons and vendors may violate sexual harassment laws and they may be victims of sexual harassment.

CONSIDERATIONS FOR WHETHER CONDUCT IS SEXUAL HARASSMENT

UNLAWFUL DISCRIMINATION

- ▶ The Illinois Human Rights Act defines “unlawful discrimination” as “discrimination against a person because of his or her actual or perceived: race, color, religion, national origin, ancestry, age, sex, marital status, order of protection status, disability, military status, sexual orientation, pregnancy, or unfavorable discharge from military service...”
- ▶ Unlawful discrimination happens when an employer takes an employment action (e.g., decisions on hiring, promotion, job duties, compensation, discharge, etc.) based on an applicant’s or employee’s actual or perceived membership in one of the protected classes.

WHAT ARE THE PROTECTED CLASSES?

- ▶ Under the Illinois Human Rights Act, the protected classes include:
 - ▶ Age: a person who is at least 40 years old.
 - ▶ Citizenship Status: (1) a born or a naturalized U.S. citizen; (2) a U.S. national; or (3) a person born outside the U.S. and not a U.S. citizen who is not an unauthorized alien and who is protected from discrimination under federal law.
 - ▶ Disability: a physical or mental characteristic of a person, including one of that necessitates the person's use of a guide, hearing, or support dog, the history of such a characteristic, or the perception of such a characteristic, regardless of the cause of the characteristic, and which is unrelated to the person's ability to perform the duties of a particular job or position.
 - ▶ Martial status.
 - ▶ Race: physical characteristics associated with race, race-linked illness, or cultural characteristics often linked to race or ethnicity.
 - ▶ Color: lightness, darkness, or other color characteristic.
 - ▶ Ancestry: racial or ethnic ancestry.

- ▶ Military status.
- ▶ National Origin: the place where a person or one of their ancestors was born.
- ▶ Order of Protection Status: protected by an order of protection, whether issued by an Illinois court or a court in another state.
- ▶ Pregnancy: includes pregnancy, childbirth, and medical or common conditions related to pregnancy or childbirth.
- ▶ Religion: all aspects of religious observance, practice, and belief, unless an employer demonstrates that they are unable to reasonable accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.
- ▶ Sex and Sexual Orientation. Actual or perceived, including gender-related identity whether or not associated with the person's designated sex at birth.

PROTECTED CLASSES CONT.

- ▶ Conduct may amount to unlawful discrimination if, based on a person's actual or perceived membership to one or more of the protected classes outlined earlier, an employer takes action involving:
 - ▶ • recruitment;
 - ▶ • hiring;
 - ▶ • promotion;
 - ▶ • demotion;
 - ▶ • renewal of employment;
 - ▶ • selection for training or apprenticeship;
 - ▶ • discharge;
 - ▶ • discipline;
 - ▶ • tenure of terms;
 - ▶ • privileges; and/or
 - ▶ • other conditions of employment.

Unlawful discrimination occurs when an employer takes a discriminatory employment action because of an applicant's or employee's actual or perceived membership in one of the protected classes above.

However, it does not prevent an employer from taking employment action for another reason unrelated to an applicant's or employee's membership in a protected class.

- ▶ Under the IL Human Rights Act, it is a civil rights violation for an employer to engage in those employment actions on the basis of unlawful discrimination or citizenship status.

775 ILCS 5/2-102(A)

CIVIL RIGHTS VIOLATION

- ▶ Specific Listed Areas Where Violations Can Occur:
 - ▶ Language
 - ▶ Religious Discrimination
 - ▶ Training and Apprenticeship Programs
 - ▶ Immigration-Related Practices
 - ▶ Pregnancy
 - ▶ Arrest Records

CIVIL RIGHTS VIOLATIONS

- ▶ It is a civil rights violation for an employer to:
 - ▶ Not make a reasonable accommodation for any medical or common condition of an applicant or employee related to pregnancy or childbirth.
 - ▶ Require an applicant or employee to accept an accommodation when that individual did not request one.
 - ▶ Require an employee to take leave, if another reasonable accommodation can be provided.
 - ▶ Not reinstate the employee to her original job or equivalent position upon her signifying her intent to return or when the need for the reasonable accommodation ends.
 - ▶ Deny employment opportunities or benefits, or take adverse action because an individual needs a reasonable accommodation.

REASONABLE ACCOMMODATION FOR PREGNANCY

- ▶ It is a civil rights violation for an employer to inquire into, or to use the fact of, an arrest record as a basis to refuse to hire, or to take any employment-related action.
 - ▶ “Arrest record” includes juvenile records; arrests not leading to conviction; and criminal history records ordered expunged, sealed or otherwise impounded.
 - ▶ Exception: this does not prohibit an employer from requesting or using sealed felony conviction information obtained from the Illinois State Police under the Criminal Identification Act (or other State or federal laws that require criminal background checks) in evaluating the qualifications of an employee or prospective employee.

CIVIL RIGHTS VIOLATIONS: ARREST RECORD

- ▶ Q: Employee A is a pregnant woman who recently told her employer, Employer B, that she was expecting a child and her due date was seven months away. The following week, Employee A asked for time off to attend a doctor's appointment. Three weeks later, Employee A had another doctor's appointment and requested time off work. Two weeks later, Employer B had a meeting with Employee A and told her that the agency had decided to make her position part-time because of Employee A's "condition". Employer B said this would be good for Employee A because now she could focus on her doctor's appointments and her health and not have to worry about working as many hours. Employee A is very upset by this because she wants a full-time position, and never told Employer B she wanted less hours or needed less hours because of her pregnancy.

Is this unlawful discrimination? Why or why not?

Answer: This is an example of unlawful discrimination because Employer B changed the conditions of Employee A's employment on the basis of her pregnancy.

- ▶ Q: Employee A, who is a 50 year-old Muslim woman, has been late to work for several months. Employee A's supervisor, Employer B, knows Employee A is a 50 year-old Muslim woman. Last week, Employer B told Employee A she was being put on a corrective action plan because of her tardiness, and if she did not improve her employment would be terminated. In fact, a month earlier Employer B terminated Employee C, a 30 year-old Christian male because of his repetitive tardiness. Employee A continued to be late, in some cases over two hours late. Employer B terminated Employee A and informed her it was because her chronic tardiness was against office policy and prevented her from completing the required work on time.

Is this unlawful discrimination? Why or why not?

Answer: This is not an example of unlawful discrimination. Although Employee A is a member of several protected classes because she is over 40 years old, Muslim, and a woman, on these facts Employer B did not unlawfully discriminate against her. She was not discriminated against because she was terminated for violating office policy and not fulfilling the job duties, and not because of her age, religion, or sex. Furthermore, Employer B applied the same standard to another employee outside of Employee A's protected classes, who engaged in similar behavior.

ADDRESSING SEXUAL HARASSMENT AND DISCRIMINATION

ASSERT YOUR RIGHTS.

- ▶ For violent harassment or discrimination, IMMEDIATELY contact:
 - ▶ Your local law enforcement agency.
 - ▶ Your employer.

ASSERT YOUR RIGHTS.

- ▶ For other forms of harassment or discrimination:

- ▶ Object!

Tell the individual to stop. If the harassment or discrimination continues, inform your employer in writing and keep a copy for your records. Inform your supervisor.

- ▶ Document the harassment.

Harassers are typically repeaters, so keep notes about each event (dates, times, places, what was said, names of witnesses).

- ▶ Talk to co-workers.

Victims need support while confronting sexual harassment and discrimination. Take care of yourself and get support from your friends, and co-workers.

- ▶ Reporting unwelcome behavior to a supervisor or other management can be helpful in assisting individuals to appropriately address the conduct.
- ▶ For example:
 - ▶ If you experience an incident of unwelcome conduct, others may be experiencing similar conduct. Informing your supervisor may help them understand the scope of the issue and determine appropriate action.
 - ▶ Where coworkers are uncomfortable because of unintentional actions, such as someone who naturally stands close to individuals, a supervisor may be able to help raise awareness before it becomes a problematic situation.
 - ▶ If you experience unwelcome conduct that does not yet interfere with your work performance or create an intimidating, hostile or offensive work environment, your supervisor may be able to address the conduct before it raises to that level.

WITNESSING SEXUAL HARASSMENT AND DISCRIMINATION

- ▶ DO NOT laugh, joke or otherwise participate or condone the inappropriate conduct.
- ▶ Talk to the Harasser.

Don't go along with his or her actions. Let him or her know that you find the behavior offensive and inappropriate for the workplace;

- ▶ Report it.

Report the incident to the employer or supervisor. Request that the behavior be stopped so the situation does not get worse.

- ▶ Support the Person Being Harassed.

The victim may feel powerless, humiliated and over-whelmed. Your support can make a real difference.

ADDITIONAL OPTIONS FOR REPORTING

- ▶ Call the State of Illinois Sexual Harassment & Discrimination Helpline
 - ▶ Call: (877) 236-7703
 - ▶ Calls are confidential and can be made anonymously
 - ▶ Visit: www.Illinois.gov/Sexual Harassment
- ▶ File a Charge with the Illinois Department of Human Rights
- ▶ File a Charge with the U.S. Equal Employment Opportunity Commission

THE ILLINOIS DEPARTMENT OF HUMAN RIGHTS (“IDHR”)

- ▶ The IDHR is a State agency that administers the Illinois Human Rights Act.
- ▶ One of IDHR’s roles is to investigate charges of discrimination, including allegations of sexual harassment in employment.
- ▶ If the IDHR finds that there is “substantial evidence” of a violation of the Illinois Human Rights Act, a complainant may file a lawsuit in circuit court or the Illinois Human Rights Commission.
- ▶ Possible remedies may include back pay, lost benefits, clearing of a personnel file, emotional damages, hiring, promotion, reinstatement, front pay where reinstatement is not possible, and attorney’s fees and costs.
- ▶ It is a public process and may take several years.

IDHR

1-800-662-3942

WWW.ILLINOIS.GOV/D

HR

THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (“EEOC”)

- ▶ To bring a legal complaint of sexual harassment or discrimination under Title VII, an employee must file a charge of discrimination with the EEOC and obtain a “right to sue” letter from the agency.
- ▶ The EEOC will interview witnesses and collect evidence relating to the complaint.
- ▶ If the EEOC determines that discrimination occurred, the EEOC will invite the employee and employer to attempt to informally set the case.
- ▶ In the event the parties cannot settle the case, the EEOC will issue a “right to sue” letter allowing the employee to bring a lawsuit under Title VII.
- ▶ You must file your lawsuit within 90 days after receiving your “right to sue” letter.
- ▶ It is a public process and may take several years.

EEOC

1-800-669-4000

WWW.EEOC.GOV

TIMING MATTERS!

A charge must be filed with IDHR and/or the EEOC within 300 days of the incident.

PROHIBITIONS AGAINST RETALIATION

- ▶ The Illinois Human Rights Act states that it is a Civil Rights violation for a person to retaliate against a person because he or she has opposed that which he or she reasonably and in good faith believes to be unlawful sexual harassment or discrimination.
- ▶ The Whistleblower Act states that an employer may not retaliate against an employee for disclosing information to a government or law enforcement agency where the employee has reasonable cause to believe that the information discloses a violation of State or federal laws, rules or regulations.
- ▶ Remedies available if retaliation occurs may include:
 - ▶ Reinstatement of employment;
 - ▶ Two times back-pay;
 - ▶ Interest on back-pay;
 - ▶ Reinstatement of fringe benefits and seniority rights; and
 - ▶ Payment of reasonable costs and attorney's fees.

PREVENTING SEXUAL HARASSMENT AND DISCRIMINATION

▶ In Illinois, there are two categories of employer liability involving sexual harassment:

▶ Vicarious liability

▶ Strict liability

- ▶ Vicarious liability --an employer may be liable for the sexual harassment of an employee by a co-worker or non-employees (vendors).
 - ▶ It is not automatic liability.
 - ▶ Under the Illinois Human Rights Act, an employer is only vicariously liable for the sexual harassment of an employee by a co-worker or a vendor if it knew or should have known of the harassment and failed to take immediate and appropriate action to stop the harassment.
- ▶ Strict liability –an employer is liable for the sexual harassment of an employee by a supervisor.
 - ▶ Automatic liability.
 - ▶ An employer is strictly liable for any supervisor's actionable harassment, regardless of whether the employer knew of it or whether it took immediate and appropriate action.

- ▶ In 2009, the Illinois Supreme Court expanded the the range of cases where an employer can be held strictly liable for the conduct of a supervisory employee.
 - ▶ *Sangamon Cty Sherriff's Dept v. The Illinois Human Rights Comm'n, Nos. 105517* (Ill. Apr. 16, 2009): The IL Supreme Court found that an employer is responsible for sexual harassment by a supervisor, regardless of the supervisor's actual authority over the victim.
- ▶ This was a significant departure from federal caselaw interpreting Title VII of the Civil Rights Act. Under Title VII, an individual is not a “supervisor” for purposes of imposing strict liability unless he or she has the authority to affect the victim's employment directly.

- ▶ Under landmark U.S. Supreme Court decisions, the Supreme Court held that employers have an affirmative defense for liability involving the harassing conduct between co-workers when:
 - ▶ (1) no tangible job action (such as demotion or a termination) occurred;
 - ▶ (2) the employer exercised reasonable care to prevent and promptly correct any sexually harassing behavior; and
 - ▶ (3) the employee unreasonably failed to take advantage of the preventative/corrective opportunities provided by the employer or to otherwise avoid harm.
- ▶ Employers will be looked on more favorably in the event of a charge of sexual harassment if the company: (i) has a strong, well-published sexual harassment policy that is consistently and promptly applied and (ii) active programs to assure employees understand the policy.



CONCLUSION