The background of the slide is a dark green, semi-transparent image of the Siena College building facade. The building features a prominent central dome and a pediment with the words "SIENA COLLEGE" inscribed on it. The text is centered and rendered in a bright yellow, sans-serif font. A solid yellow horizontal bar is located at the top of the slide.

Siena College Title VII Discrimination and Harassment Policy Training

What Is Title VII?

Title VII of the Civil Rights Act of 1964 is a federal law making it unlawful for “an employer” to “discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of such individual’s race, color, religion, sex, sexual orientation, disability, or national origin.”

42 USC sec 2000e-2(a)

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What Does Title VII Mean for Me?

Title VII protects the right of employees & students to work in an environment free from *discriminatory* intimidation, ridicule, and insult occurring as a result of being a member of a protected category.

Protected categories include race, religion, ethnicity, national origin, gender, age, sexual orientation, marital status, veteran status, disability or other basis identified in federal or state law.

The protected category of gender includes sexual harassment.

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Protected Categories

Federally Protected:

- Age
- Disability
- Equal Compensation
- Genetic Information
- National Origin
- Pregnancy
- Race/Color
- Religion
- Retaliation
- Sex
- Sexual Harassment

NY State Protected:

- Age
- Race
- Creed
- Color
- National Origin
- Ancestry
- Military Status
- Sex
- Pregnancy
- Disability
- Sexual Orientation
- Genetic Predisposition or Carrier Status
- Arrest or Conviction
- Lawful Off-Duty Activities
- Marital Status
- Status as Domestic Violence Victim

What Does Title VII Mean at Siena?

Siena College is committed to promoting a learning and working environment where discrimination and harassment is not tolerated.

This policy shall apply regardless of race, color, religion, creed, ethnicity, national origin, gender, age, sexual orientation, gender identity or expression, familial status, veteran status, disability, predisposing genetic characteristics, domestic violence, victim status, or other basis identified in federal or state law.

Acts of discrimination and harassment, which are offenses directed against persons because of their identification with one of these categories, are prohibited under this policy.

This policy applies to conduct involving students, employees, or third parties (e.g., contractors, alumni, visitors) that: (a) occurs on College property, (b) takes place in any College-sponsored program or activity such as travel, research or internship programs, or (c) when such conduct may have a continuing adverse effect or could create a hostile environment on campus.

What is Discrimination?

Discrimination is adverse treatment of any faculty, administrator, staff, or student based on the protected class or category of persons to whom they belong, rather than on the basis of their individual merit.

Federal and State Law: Under Federal and New York State laws, it is illegal to discriminate against individuals, including:

- Recruitment and selection
- Compensation, assignment, or classification of individuals
- Use of campus facilities
- Training and apprenticeship programs
- Retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices
- Employment/academic decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain sex, race, age, sexual orientation, religion, or ethnic group, or individuals with disabilities and denying employment or academic opportunities to a person because of marriage to, or association with, an individual of a particular race, religion, national origin, an individual with a disability or other protected category

Discrimination

Disparate Impact

Disparate Treatment

Action

Quid Pro Quo

Hostile Work Environment

Co-Worker

Supervisor

What is Disparate Impact?

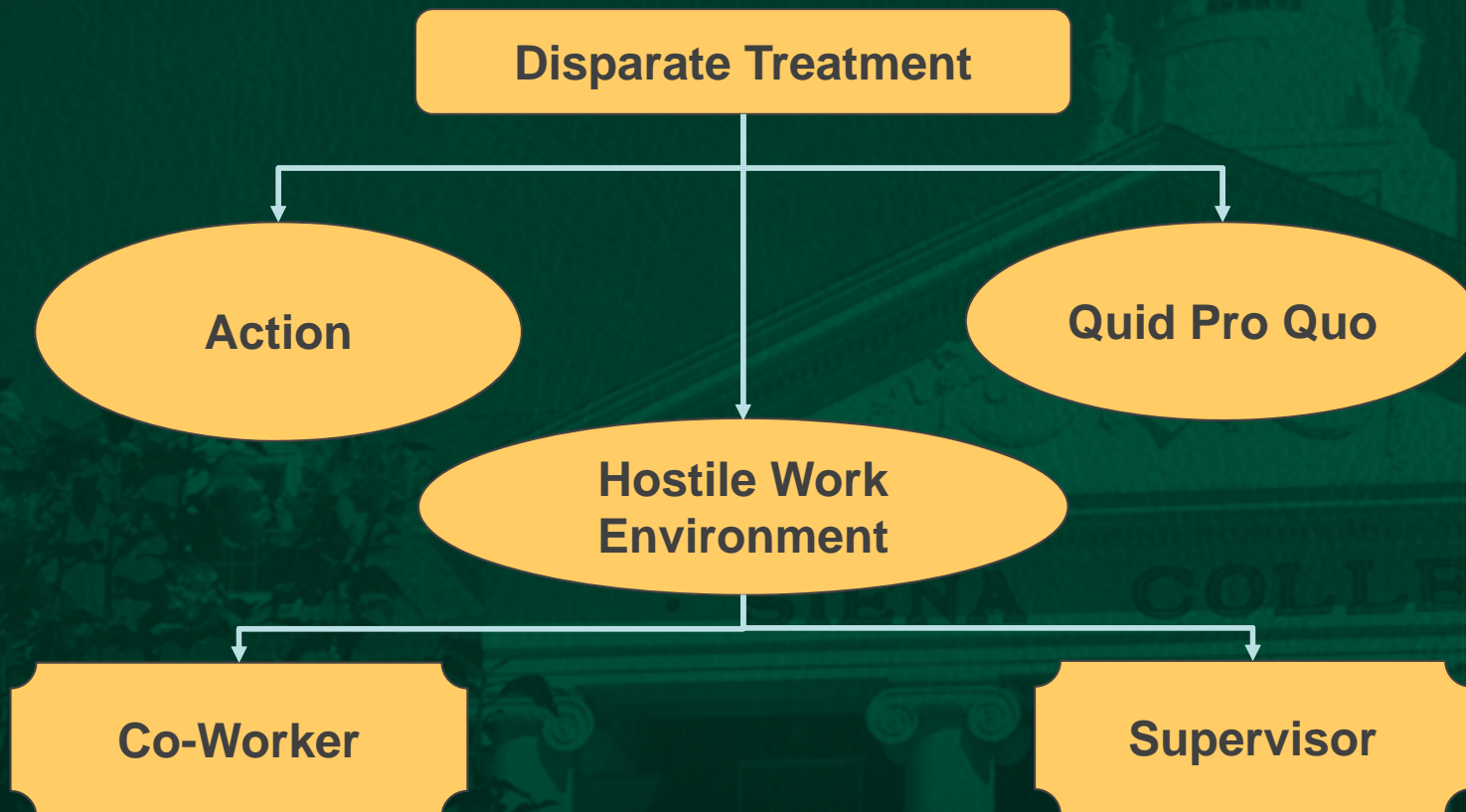
Disparate impact is a type of employment discrimination that considers the **effect** of an employment policy rather than the intent behind it. Apparently neutral policies and practices that have a **disproportionate adverse affect** on members of a protected class are prohibited under the law, even if there is no discriminatory motive.

Examples:

- A strength requirement that results in eliminating a disproportionate number of female applicants for a job.
- An applicant exam that results in eliminating a disproportionate number of African Americans.
- A company policy that denies seniority to employees returning from maternity leave. Since only women get pregnant, women are disproportionately affected.

What is Disparate Treatment?

Disparate treatment is another type of employment discrimination. An employee who alleges that he or she was **intentionally** treated differently than other employees who were similarly situated, and that the difference was because of his or her race, gender, age, or other protected trait, is making a disparate treatment claim.



Disparate Treatment – Tangible Employment Action

An **action** taken by the employer, **because of your membership in a protected class**, that affects your pay or your employment status.

Examples Include:

- You apply, but are not hired
- You're fired
- You're not promoted
- You're demoted or given an undesirable reassignment
- You're pay or benefits are reduced

Does Not Include:

- Altering job title without change in salary, benefits, duties, or prestige
i.e. change in location if distance to job site from home is similar

Disparate Treatment – Hostile Work Environment

Harassment claims are based on abusive treatment by co-workers and supervisory employees. These claims are sometimes referred to as a hostile work environment.

A hostile work environment is one in which unwelcome verbal or physical conduct, directed at an employee or student because of his or her membership in a protected category, creates an intimidating, offensive, or disruptive work environment.

Isolated instances of offensive behavior will not create a hostile work environment, unless unusually offensive, such as a physical attack.

It is important to note that the ***motivation*** for the harassment is what is examined here. Harassing behavior need not only include obvious references to an employee's race, gender, or sexuality. If it is found that the motivation for the harassment is the employee's membership in a protected class, that is enough to claim disparate treatment.

Disparate Treatment – Hostile Work Environment

Explicit harassment examples include:

- Racial slurs or epithets
- Negative stereotyping
- Name-calling and derogatory humor about supposed traits of group
- Telling jokes pertaining to protected categories
- Posters, email, cartoons, pictures displayed in the work area that create an offensive and intimidating environment
- Graffiti or other written material

Explicit sexual harassment examples include:

- Unwelcome sexual advances
- Sexual innuendoes, comments and sexual remarks
- Suggestive, obscene, or insulting sounds
- Patting, pinching, brushing up against another's body

Implicit harassment examples include:

- Undesirable assignments
- Poor performance evaluations
- Use of other procedural mechanisms

***Harassment Based on Protected Category
can be Oral, Written, Non-Verbal, or Physical***

Disparate Treatment – Hostile Work Environment

Numerous factors will be considered when determining whether or not a given situation rises to the level of a Hostile Work Environment:

- Was the conduct verbal or physical?
- How frequently was it repeated?
- Was the conduct hostile and patently offensive?
- Was the alleged harasser a co-worker or a supervisor?
- Did others join in perpetrating the harassment?
- Was the harassment directed at more than one individual?

NOTE: Workplace discrimination laws ***should not be considered a code of civility***. Your supervisor may mistreat you without a discriminatory motive; he/she may simply be an unpleasant person, and if he/she mistreats all his/her employees in a like manner, you can't sue for discrimination, although such conduct may violate an employer's code of conduct rules.

Disparate Treatment – Hostile Work Environment *Quid Pro Quo*

Employees who allege gender discrimination have another type of claim available to them – the quid pro quo claim.

Quid Pro Quo is Latin for “this for that” or “something for something” and refers to an exchange. In this case, the exchange is between supervisors and subordinates, or between faculty and students, where one is asked to provide sexual favors in exchange for something else, such as the job benefit, continued employment, good grades, or recommendations.

By its very nature, quid pro quo harassment can be committed only by a supervisor or someone with authority over the victim.

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Disparate Treatment – Hostile Work Environment *Quid Pro Quo*

To prove a quid pro quo claim the employee must show that:

1. Submission to such conduct is made either implicitly or explicitly a term or condition of employment.
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.
3. Such conduct has the purpose or effect of unreasonably interfering with the individuals work performance or creating an intimidating, hostile, or offensive working environment.

Disparate Treatment – Hostile Work Environment Subtle Sexual Harassment

Quid Pro Quo sexual harassment is easily recognizable. It can sometimes be more difficult to determine situations where seemingly friendly behavior is in fact, inappropriate for the workplace.

Problems may arise when employees do not understand the difference between friendly behavior and subtle sexual harassment. Subtle sexual harassment is **unwelcome** sexual or sex based behavior, and if it goes unchecked, it could become illegal sexual harassment.

Intent vs. Impact

- Intent is not relevant in determining whether or not unwelcome behavior is sexual harassment.
- It is the **IMPACT** of the behavior on the offended individual, work, or school environment that matters.
- “I didn’t mean anything by it” is not a valid defense of harassing behavior.

Unwelcome Behavior will be Judged on its Impact

Disparate Treatment – Hostile Work Environment Subtle Sexual Harassment

How can you avoid committing unwelcome behavior?

General Guidelines:

- Respect those around you
- Think before acting
- Imagine how others might feel
- Be respectful of different perspectives
- Be courteous
- Think before you make a joke

Ask yourself:

- How would I feel if I were in another's position?
- Would someone I care about like to be treated this way?
- Would my behavior pass the "newspaper test"?
- Could my behavior be misinterpreted as intentionally hurtful or harassing?
- Would I make the same comment to my mother?

Disparate Treatment – Hostile Work Environment *Subtle Sexual Harassment*

If you are experiencing unwelcome behavior, you can take the following steps:

- ✓ Determine what specific behavior is unwelcome.
- ✓ Tell the person, “(Specific behavior) is unwelcome.”
- ✓ Restate if not taken seriously.
- ✓ Don’t apologize for how you feel.
- ✓ You have a right not to be treated that way.
- ✓ Describe how you want to be treated.
- ✓ If behavior continues, you will take other action.
- ✓ Contact your EEO Specialist.

Disparate Treatment – Hostile Work Environment *Third Party Harassment*

The individual to whom the harassing conduct is aimed is not the only person who can complain about the harassment.

Third parties may complain when harassment directed at others adversely affects the other person's work environment.

Third parties may also complain about offensive conduct, even if it is consensual between the parties involved, if it is creating a hostile work environment for the third party.

“Third party harassment” may also refer to harassment of an employee BY a third party such as a contractor, customer, or supplier.

Disparate Treatment – Employer Liability

Harassment by a Co-Worker

- Liability of the employer depends on whether it knew, or should have known, of the alleged conduct and failed to take prompt remedial action.

Harassment by a Supervisor

- Employer is liable for a supervisor's harassment if it results in tangible employment action.
- If not tangible employment action, employer may avoid or limit liability by establishing:
 1. That it exercised *reasonable care* to prevent or correct any harassing behavior, and
 2. That the employee unreasonably failed to take advantage of any preventive for opportunities provided by the employer or to avoid harm otherwise.

Reasonable Care

The employer has a policy and complaint procedure that is enforced. Elements include:

- Clear explanation of prohibited conduct
- Assurance of no retaliation
- Clearly describes complaint process providing real avenues of complaint
- Assurance of confidentiality to the extent possible
- Process providing prompt, thorough, and impartial investigation
- Assurance of corrective action

Disparate Treatment – Employer Liability *Reasonable Care*

Employee's failure to complain may not defeat employer's liability for supervisory harassment:

- ✓ Risk of retaliation (reasonable or unreasonable)
- ✓ Obstacles to complaint
 - Undue expense
 - Inaccessible point of contact
 - Intimidating requirements
- ✓ Perception that complaint process is ineffective
 - Awareness of instances in which co-workers' complaints failed to stop the harassment

Retaliation

It shall be unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment 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.

42 USC sec 2000e-3(a)

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Retaliation – Prima Facie Case

To prove, employee must show:

- ✓ Participation in a protected activity known to the employer,
- ✓ Employment action disadvantaging the employee,
- ✓ Causal connection between the protected activity and the adverse employment action

Retaliation - Caveat

A finding of unlawful retaliation is not dependent on the merits of the underlying Discrimination complaint:

“It is well established that even when a charge of discrimination is without merit, an employee or applicant is still protected by Title VII in making the charge, and he may not be retaliated against.”

Pace v. NYC Commission on Human Rights

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What do I do, as a member of the Siena Community, if I believe I am being discriminated against due to my membership in a protected group?

Siena College's Title IX Coordinator/EOS has primary responsibility for coordinating the College's efforts to comply with and carry out its responsibilities under Title VII.

Title IX Coordinator/EOS Employees/Students

Lois Goland, JD
Sarazen Student Union, room 235
Siena College
518-782-6673
lgoland@siena.edu

Deputy Title IX Coordinator Employees

Michele Barriere
Trustco Bank Center
Siena College
518-783-2403
mbarriere@siena.edu

Senior Deputy Title IX Coordinator Students

John L. Bebb
Sarazen Student Union, room 302
Siena College
518-783-2328
jbebb@siena.edu

Individuals should contact the Title IX Coordinator in order to:

- Seek information or training about rights and courses of action available to resolve complaints
- Make a report that involves potential violations of this policy
- Get information about available resources and support services relating to discrimination and harassment
- Ask questions about the College's policies and procedures related to discrimination and harassment

Choice of Actions in Response to Discrimination and Harassment

Employees & Students have many options that can be pursued simultaneously:

- Confidentially disclose a violation to the Center for Counseling and Student Development, Health Services, the Office of the College Chaplain, or Siena College Friars.
- Anonymously disclose a crime or violation to the Public Safety anonymous tip line: www.siena.edu/anonymous
- Make a report to a College Official/Responsible Employee. (Private, Not Confidential)
- Contact Public Safety (Private, Not Confidential)
- Contact the Title IX Coordinator/EOS (Private, Not Confidential)
- Contact a Deputy Title IX Coordinator (Private, Not Confidential)
- File with NYS Division of Human Rights, The Equal Opportunity Commission, or the Office of Civil Rights of the United States Department of Education

Confidential Resources vs. Private/Non-Confidential Resources and Duty to Report by Responsible Employees

Confidential Resources

- Counseling Center
- Health Services
- Office of the College Chaplain and Friars

These are the only employees who can offer legally protected confidentiality. These individuals are **NOT** required to report any information about an incident to the Title IX Coordinator without a Complainant's permission.

Private/Non-Confidential Resources

- Title IX Coordinator/EOS
- Deputy Title IX Coordinators
- Public Safety

These individuals cannot offer confidentiality however will maintain privacy to the greatest extent possible. The information provided to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or to seek a resolution.

Duty to Report by Responsible Employees

"Responsible Employees" have a duty to report incidents of discrimination and harassment, including all relevant details, to the Title IX Coordinator.

- Such employees are not permitted to maintain Complainant's confidentiality.
- Siena has designated all Faculty, Staff, and Administrators, with the exception of those serving as a Confidential Resource, as responsible employees.

Investigation of Complaint by Siena College

All reports and complaints of discrimination and harassment should be filed with the Title IX Coordinator/EOS, Public Safety, or Deputy Coordinator as soon as possible after the incident(s) occurred or in a timely manner.

While Complainants are welcome to file a report or complaint at any time, Complainants are encouraged to come forward as soon as possible because a delay in reporting or making a complaint may impact the effectiveness of the investigation. Delays in reporting may impair the College's ability to investigate due to, but not limited to, fading memories and the availability of witnesses and evidence.

Complainants and Respondents may use an advisor of their choice (including legal counsel) at each point in the proceedings. The advisor may serve only in an advisory role and may not directly represent either party.

Upon receiving information of an alleged violation of this policy, either the Title IX Coordinator/EOS, Public Safety, Deputy Coordinator, or a combination of these individuals will conduct an investigation (interview parties, take or receive statements).

If the reporting witness or Complainant chooses to pursue action under this policy, s/he shall make a written statement regarding the discrimination and harassment complaint.

A reporting witness or Complainant may choose to withdraw a complaint and/or involvement from the process at any time.

Complaint Resolution at Siena College

Informal Process

- For non-violent conduct only
- May use negotiation, shuttle diplomacy, mediation, restorative justice.
- If Respondent confirms allegations and accepts responsibility, Title IX Coordinator in consultation with other designated College officials will determine appropriate course of action.

Formal Process

- For violent conduct
- OR:**
- If Respondent does not accept responsibility for allegations
 - If Complainant is not in agreement with outcome of informal intervention
 - If Title IX Coordinator determines additional inquiry necessary

Resolution Through Other Means

Complainants and Respondents have the right to seek resolution through other sources, for example:

- The New York State Division of Human Rights,
www.dhr.ny.gov
- The Equal Employment Opportunity Commission,
www.eeoc.gov
- Office of Civil Rights of the United States Department of Education,
1-800-421-3481