

Building an Effective **ANTI-Harassment Program** *That Supports Employee Safety*

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Online Evaluation



Disclaimer

Information and materials provided in this presentation are based on professional experience and knowledge in the field of human resources and should not be considered legal advice.

Due to the complexity of various federal and state employment-related laws, participants may need to discuss individual situations with their legal counsel.

Expected take-aways:

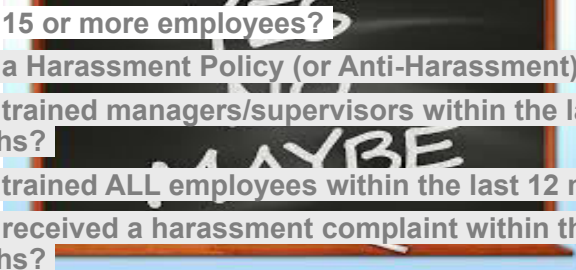
- Importance of being aware of obligations – *Taking Accountability*
- Importance of changes in processes – *How It Affects You & Your Employees*
- Importance of training – *Educating Employees*



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Quick Scan – “How Many.....”

- 
- Have 15 or more employees?
 - Have a Harassment Policy (or Anti-Harassment)?
 - Have trained managers/supervisors within the last 12 months?
 - Have trained ALL employees within the last 12 months?
 - Have received a harassment complaint within the last 12 months?



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Why This Topic?

Reason 1: OSH Act



Although currently there are no specific federal workplace safety and health standards to address problems of sexual harassment:

- The federal Occupational Safety and Health Act (OSH Act), in Section 5 (a) (1) [*General Duty Clause*], provides that -
- "each employer shall furnish employees a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to employees."

Source: Sexual Harassment and OSHA: Is Sexual Harassment a "Recognized Hazard"? - EHS Daily Advisor (ehs.com)



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OSHA Related Injuries

Reason 1: OSH Act

Typical –

Traumatic event resulting in broken bones or blood gushing from open wounds, etc.

Consider –

Psychological injuries as a result from being victim of sexual harassment:

Embarrassment

Loss of reputation

Fear of retaliation

Criticism, Blame, Loss of Job

Stress, Absenteeism, Low Morale

Source: Sexual Harassment On The Job | OSHA Safety Manual (safetymanual.osha.com)



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Why This Topic?

Reason 1: OSH Act



What Is Workplace Violence?

- Any act or **threat of** physical violence, **harassment**, intimidation, or other threatening disruptive behavior that occurs at the work site. It ranges from threats and verbal abuse to physical assaults and even homicide.

Source: Workplace Violence - Overview | Occupational Safety and Health Administration (osha.gov)



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Harassment - Definition

Definition under the U.S. Equal Employment Opportunity Commission (EEOC):

• Harassment:

- **A form of discrimination** that includes unwelcome conduct that is based on race, color, sex: including pregnancy (with or without sexual conduct), religion, national origin, age (40 or older), disability or genetic information – **OR** –
- Because the employee opposed job discrimination or participated in an investigation or complaint proceeding under the Equal Employment Opportunity statutes.



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Employee Wellbeing & Workplace Stress

Causes of work stress include:

- Being unhappy in your job
- Having a heavy workload or too much responsibility
- Working long hours
- Having poor management, unclear expectations of your work, or no say in the decision-making process
- Working under dangerous conditions
- Being insecure about your chance for advancement or risk of termination
- Having to give speeches in front of colleagues

- **Facing discrimination or harassment at work, especially if your company isn't supportive**

Source: Common Causes of Stress & Their Effect on Your Health (webmd.com)



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Company Culture

According To Gallup's Culture Transformation:



When Your Company **Culture is right** - Your Company Can.....

- **Attract** Better Candidates
- **Retain** Your Most Talented People
- **Increase** Engagement & Productivity
- **Improve** Employee Wellbeing & **Safety**
- **Enhance** Diversity, Equity, and Inclusion
- **Deliver** The Best Possible Customer Experience

Source: Build a company culture that improves performance – Gallup



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A Toxic Culture?

How would your customers react to similar claims against your organization?

- **Victims of harassment in the workplace now can tell their stories in any number of places other than (or in addition to) a lawsuit:**
 - Twitter
 - LinkedIn
 - Facebook
 - Tumblr, and
 - Other Outlets (i.e., EEOC, Media, etc.)



Source: <https://www.naviglobal.com/blog/article/high-profile-sexual-harassment-claims-show-a-toxic-culture-can-be-a-product-defect/>



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Understanding Effects of Discrimination In the Workplace

Recent Gallup Survey of U.S. Workers.....

* Difference in percent who strongly agree for employees who have experienced discrimination in the past 12 months, by race/ethnicity:

	WHITE		BLACK		HISPANIC	
	Yes	No	Yes	No	Yes	No
If I raised a concern about how I am treated, I am confident my employer would do what is right.	35	27	35	19	35	20

Source: Understanding the Effects of Discrimination in the Workplace (gallup.com)



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Why This Topic?

REASON 2: EEOC Statistics



FY2021 Statistics

22,270	Number of Harassment-related Charge complaints filed with the federal EEOC
5,581	Number of sexual harassment complaints filed with the federal EEOC
16%	Percentage of complaints filed by males
1,769	Number of sexual harassment complaints that had <i>Merit Solutions</i> (over 25% of all resolutions)

\$61.6MM

Amount of Monetary Benefits

- Does not include monetary benefits obtained through litigation.
- Does not include additional legal fees, negative publicity, lost productivity

**AVERAGE:
\$34,800**

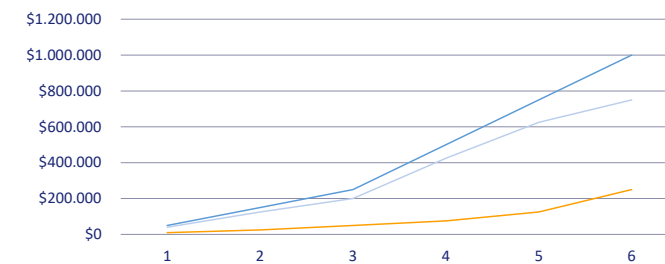
Source: <https://www.eeoc.gov/stats/charges.html>



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Impact of Awards/Penalties On Revenues/Resources



Revenue	\$50,000	\$150,000	\$250,000	\$500,000	\$750,000	\$1,000,000
Awards	\$10,000	\$25,000	\$50,000	\$75,000	\$125,000	\$250,000
Net Funds	\$40,000	\$125,000	\$200,000	\$425,000	\$625,000	\$750,000

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Why This Topic?

REASON 3



EEOC - Promising Practices

EEOC's - **Study of Harassment in the Workplace** ("Report") identified five core principles effective in preventing and addressing harassment:

1. Committed and Engaged Leadership
2. Consistent and Demonstrated Accountability
3. Strong and Comprehensive Harassment Policies
4. Trusted and Accessible Complaint Procedures; and
5. Regular, Interactive Training Tailored to the Audience & the Organization

*EEOC: Although these practices are not legal requirements under federal employment discrimination law, they may enhance employers' compliance efforts.

Source: <https://www.eeoc.gov/eeoc/publications/promising-practices.cfm>



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1. Promising Practices: Leadership

Highlights - Commitment From Senior Leaders That Includes:

- **Clearly, Frequently, and Unequivocally Stating That Harassment Is Prohibited**
- Incorporating Enforcement of, and Compliance with, the Organization's Harassment and Other Discrimination Policies and Procedures into the Organization's Operational Framework
- Allocating Sufficient Resources For Effective Harassment Prevention Strategies
- **Allocating Sufficient Staff Time For Harassment Prevention Efforts**



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2. Promising Practices: Accountability

Highlights – Senior Leaders Exercise Oversight, Including:

- Evaluating Effectiveness of Strategies To Prevent and Address Harassment
- Ensuring Concerns or Complaints Regarding Policy, Complaint System, and/or Training Are Addressed
- Directing Staff to Periodically Test Complaint System To Determine If Complaints Are Received And Addressed Promptly
- Ensuring Necessary Changes to Harassment Policy, Complaint System, Training, or Related Policies, Practices, and Procedures Are Implemented and Communicated To Employees
- **Seek Feedback About Anti-harassment Efforts –**
 - **Conducting Anonymous Employee Surveys Regularly To Assess Whether Harassment Is Occurring, Or Is Perceived To Be Tolerated**



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Leadership & Accountability

*"Calling All CEOs: **Corporate Culture** Is Your Best Defense Against Sexual Harassment Claims" – Catherine Mattice Zundel (Forbes Council; 22-February 2018)*

1. Build a strong "see something, say something" culture
2. **Live the company's core values**
3. Actively change the culture
4. **Address all bad behavior, even when it's not illegal**
5. Conduct a culture assessment
6. Hold managers accountable for a positive work environment by measuring them on it
7. Reinforce and reward good behavior
8. Communicate that you will not tolerate any bad behavior, and then actually don't tolerate it
9. **Provide training on respectful workplace behaviors for the entire company – and on creating a positive culture for managers**
10. Designate multiple channels to receive harassment complaints
11. **Commit to being an example, and challenge your senior team to do that same**



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3. Promising Practices: Harassment Policy

Highlights – A Comprehensive Policy Includes, for example:

- **Statement That The Policy Applies To Employees At Every Level, As Well As To Applicants, Clients, Customers, and Other Relevant Individuals**
- Unequivocal Statement That Harassment Based On Any Legally Protected Characteristic Is Prohibited
- Easy To Understand Description of Prohibited Conduct, Including Examples
- Description Of The Organization's Harassment Complaint System, Including Multiple, Easily Accessible Reporting Avenues
- **Statement That Employees Are Encouraged to Report Conduct They Believe May Be Prohibited Harassment – Even If Not Sure Conduct Violates Policy**
- **Statement Employer Will Provide a Prompt, Impartial, and Thorough Investigation**



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Your Harassment Policy

Company – Harassment Policy - SAMPLE

The Company is committed to maintaining a work environment that is free from discrimination or harassment on the basis of race, color, national origin, religion, age, sex, gender, genetics, disability, or any other legally protected characteristic.



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Your Harassment Policy

CONTINUED

All employees are **responsible** for helping to enforce the policy against harassment.

Ultimately, the policy should address the fact that:

- **All employees...**
- must **share the responsibility of** understanding and
- **preventing** discrimination and **harassment**.



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4. Promising Practices: Complaint System

Highlights – Effective Harassment Complaint System Includes:

- Fully Resources, Enabling Organization To Respond Promptly, Thoroughly, and Effectively to Complaints
- Translated Into All Languages Commonly Used By Employees
- **Provides Multiple Avenues Of Complaint – Including Avenue To Report Complaints Regarding Senior Leaders**
- Responsive To Complaints By Employees and Other Individuals On Their Behalf
- **Provides Prompt, Thorough, and Neutral Investigations**
- Protects Privacy of Alleged Victims, Individuals Who Report, Witnesses, Alleged Harassers, and Other Individuals To Extent Possible
- **Process To Determine Whether Alleged Victims, Individuals Who Report, Witnesses, Other Relevant Individuals Are Subjected To Retaliation**
- Process To Ensure Alleged Harassers Are Not Prematurely Presumed Guilty Or Prematurely Disciplined For Harassment
- Process To Convey Resolution Of The Complaint To The Complainant and Alleged Harasser



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Company Reporting Steps - Example

- **Any employee** who has been **the victim** of prohibited harassment **or** who has **witnessed** such harassment **must immediately notify** his or her supervisor or member of management so the situation can be promptly investigated and remedied.

Specifically, employees who believe they have been the victim or witness a violation of this policy are expected to:

- **Report such conduct immediately** to their supervisor, – or –
 - * Human Resources or another member of Management

Note: Employees may by-pass anyone in their normal line of supervision to make a report

* There will be **no retaliation** against a person who files a bona fide complaint or participates in any way in the investigation of a bona fide complaint.



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Don't Punish the Victim

NON-RETALIATION

The Law:

An employee who:

- complains about a violation of law
- or participates in a charge or case contesting a violation of law (even if it's not substantiated)

Cannot be retaliated against for their efforts to contest the alleged illegal actions.

- Think about:
 - Timing & Basis of Decision
 - Consistency of Treatment
 - Ability to Defend Action



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Promising Practices: Complaint System

CONTINUED

Highlights – Effective Harassment Complaint System **Also Includes:**

- **Employees Responsible For Receiving, Investigating and Resolving Complaints** or Otherwise Implementing The Harassment Complaint System:
 - **Are Well-trained, Objective, and Neutral**
 - Have The Authority, Independence, and Resources Required To Receive, Investigate, and Resolve Complaints Appropriately
 - Take All Questions, Concerns, and Complaints Seriously, and Respond Promptly and Appropriately
 - Create and Maintain An Environment In Which Employees Feel Comfortable Reporting Harassment To Management
 - Understand and Maintain Confidentiality Associated With The Complaint Process
- **Appropriately Document Every Complaint –**
 - From Initial Intake to Investigation to Resolution
 - Use Guidelines To Weigh The Creditability Of Relevant Parties
 - Prepare Written Report Documenting Investigation, Findings, Recommendations, and Disciplinary Action Imposed, And Corrective Action Taken



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Investigating a Claim

Expected steps:

- **Every allegation taken seriously**
- Human Resources will be involved
- Complaints will be investigated
 - Interview:
 - Claimant - Alleged harasser - Witnesses
- Share info only when “legitimate business need to know”
- Follow up with Claimant and Alleged Harasser (outcome of investigation)
- **Note: Not necessary to inform other employees (or witnesses) of the results of the investigation.**



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5. Promising Practices: Effective Training

Highlights – May Be Most Effective If:

- **Championed By Senior Leaders**
 - Repeated and Reinforces Regularly
- **Provided To Employees At Every Level and Location**
 - Provided In Clear, Easy To Understand Style and Format
 - Provided In All Languages Commonly Used By Employees
- **Tailored To The Specific Workplace and Workforce**
- **Conducted By Qualified, Live, Interactive Trainers**
 - If Not Feasible – Designed To Include Active Engagement By Participants
- Routinely Evaluated By Participants and Revised As Necessary



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Session Objectives - Sample

EMPLOYEES & SUPERVISORS

• ALL Employees (Part 1)

- What Harassment Is
 - *including sexual harassment*
- Harassment & The Law
- Company's Commitment
- Preventing Harassment
- Responding to Harassment
- Taking Personal Responsibility

Minimum 1 Hour

Managers & Supervisors (Part 2)

- Why Topic Is Important
- Review Part 1:
 - *Harassment, The Law, and Company Policy*
- Recognizing Liability Issues
- Investigating Claims
- Addressing Retaliation

Minimum 1 Hour



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Sexual Harassment



Sexual harassment can occur in a variety of circumstances, including but not limited to:

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.



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What Constitutes Harassment?

Conduct that may be harassment, includes but is not limited to:

- Hazing
- Comments
- Jokes
- Touching / Brushing
- Flirting / Request for Dates
- Threats / Attacks
- Pictures / Comments

Hostile Work Environment

- Jokes
- "Compliments"
- Touching/Horseplay
- Displays/Posters

***Include examples related to your environment!**

***Also give examples of what behaviors are expected/accepted!**



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Workplace Bullying - Examples

Disrespectful Forms of Bullying Behavior Can Include:

- ♦ Constant and unfair criticism
- ♦ Social bantering and teasing, **Hazing**
- ♦ Yelling, shouting and screaming
- ♦ Insults and behind-the-back put-downs
- ♦ Hostile glares and other intimidating looks
- ♦ Malicious gossiping
- ♦ Monopolizing and other resources
- ♦ Aggressive e-mails or notes
- ♦ Overt threats and aggression or violence



***Include examples related to your environment!**



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Personal Responsibility

By-Stander Intervention....



You can make a difference when a particular behavior or interaction is inappropriate, consider the following:

- **Be Aware**
 - Learn to recognize harassment that violates the policy
- **Be Responsible**
 - Support others to recognize and speak up when they are being harassed or witness harassment
- **Be Empowered**
 - Have the courage to speak out against harassment and/or report it
- **Know Your Resources**
 - Engage resources (co-workers, supervisors, HR, management) to help prevent and/or report harassment



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Additional Training “Part 2”

Managers & Supervisors



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Employer Liability

An employer is responsible for the acts of its supervisors (agents of employers)

Note: Employers subject to vicarious (explicit) liability for unlawful harassment by supervisors.

- Employers should be encouraged to prevent harassment and employees should be encouraged to avoid or limit the harm from harassment.



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Supervisor Responsibility

NOTE: If a manager or supervisor **is aware** that discrimination, harassment or retaliation is occurring, **or receives information** that discrimination, harassment or retaliation might be occurring, he or she **must take immediate action** to address the problem!

- If a supervisor becomes aware of questionable behavior or receives a complaint, the supervisor must:
 - Take immediate and corrective action
 - Notify HR – take a partner
 - Document any action taken
 - Communicate actions taken to the employee
 - explain what they did to prevent the problem from occurring again
 - Maintain confidentiality to the extent possible
 - information about the incident should only be shared on a *need to know* basis

DUTY TO REPORT



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What's in it for Supervisors/Managers?

- **Supervisors can be personally named in lawsuits if you:**
 - Are the harasser
 - Overlook a complaint or mishandle it
- **Supervisors may be liable for sexual harassment under the following circumstances:**
 - When a complaint is made to them
 - When they see or hear about behavior that is considered offensive
 - When they see or hear (with or without proof) that they know is sexual harassment
 - When they engage in behavior that is sexual harassment
 - When they delay in taking action
 - When they fail to take appropriate action

SUPERVISOR LIABILITY

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Investigating a Claim

- **Take every allegation seriously** – even if the person says they don't want you to do anything!
- Supervisors/Managers should take a partner – don't investigate on your own!
 - Immediately involve Human Resources
- Investigate every complaint (**by trained individual**)
 - Interview the complainant, alleged harasser, and witnesses
 - If advisable, get written, signed statements from all involved parties
 - Take notes; ask questions; keep a log of all the facts
 - Document all your meetings and findings in writing. Keep good notes
 - Ask the complainant what they want done.

NOTE: OBLIGATED BY LAW!



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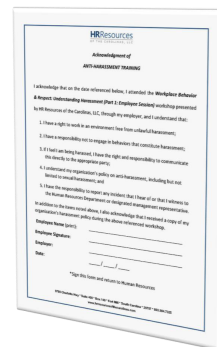
Policy - Understanding & Commitment

EMPLOYEE ACKNOWLEDGEMENT

TRAINING – Part 1:

- **ALL Employees**
 - What Harassment Is
 - including sexual harassment
- Harassment & The Law
- Company's Commitment – *The Right Thing To Do!*
- Preventing Harassment
- Responding to Harassment
- Taking Personal Responsibility

Minimum 1 Hour



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Obligations – Understanding & Commitment

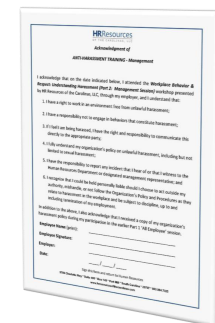
MANAGERS/SUPERVISORS ACKNOWLEDGEMENT

TRAINING – Part 2:

Managers & Supervisors

- Why Topic Is Important
- Reinforce Part 1:
 - Harassment, The Law, and Company Harassment Policy
- Recognizing Liability Issues
- Investigating Claims
- Addressing Retaliation

Minimum 1 Hour



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Avoiding Harassment Claims

Wrap-up

- **Communicate** with your staff (discuss the policy with them)
- **Listen** and **observe** what is happening in your area (department, shop, etc.)
- **Immediately** address any problems – call HR or legal department (take a partner!) – *take every complaint seriously!*
- Help HR or Legal **Document** complaints and investigations
- Follow all Company Policies
- **Don't make extra work** for yourself – err on the side of caution!



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Promising Practices Recap

EEOC's Five Core Practices:

1. Committed and Engaged Leadership
2. Consistent and Demonstrated Accountability
3. Strong and Comprehensive Harassment Policies
4. Trusted and Accessible Complaint Procedures; and
5. Regular, Interactive Training Tailored to the Audience & the Organization

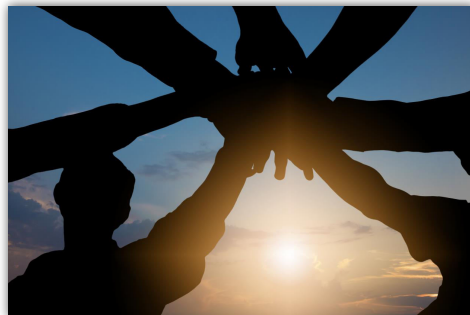


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Final Activity

- Group Participation Activity



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Why This Topic?



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References & Additional Information

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