

UC Sexual Harassment Prevention Training

Learning Activity Details

Description:

Sexual Harassment Prevention Training for Supervisors for the UC system.

Next **Cancel**

UC Sexual Harassment Prevention Training

Custom Delivery

To assist this learning activity to provide you a personalized learning experience, please provide input here.

Learning Activity Tracks

This learning activity offers multiple tracks with different time requirements.

- Faculty
- Staff

Back

Next

Cancel

UC Sexual Harassment Prevention Training

Expected Time


Estimated time for completion:

2 hours


Back

Next

Cancel



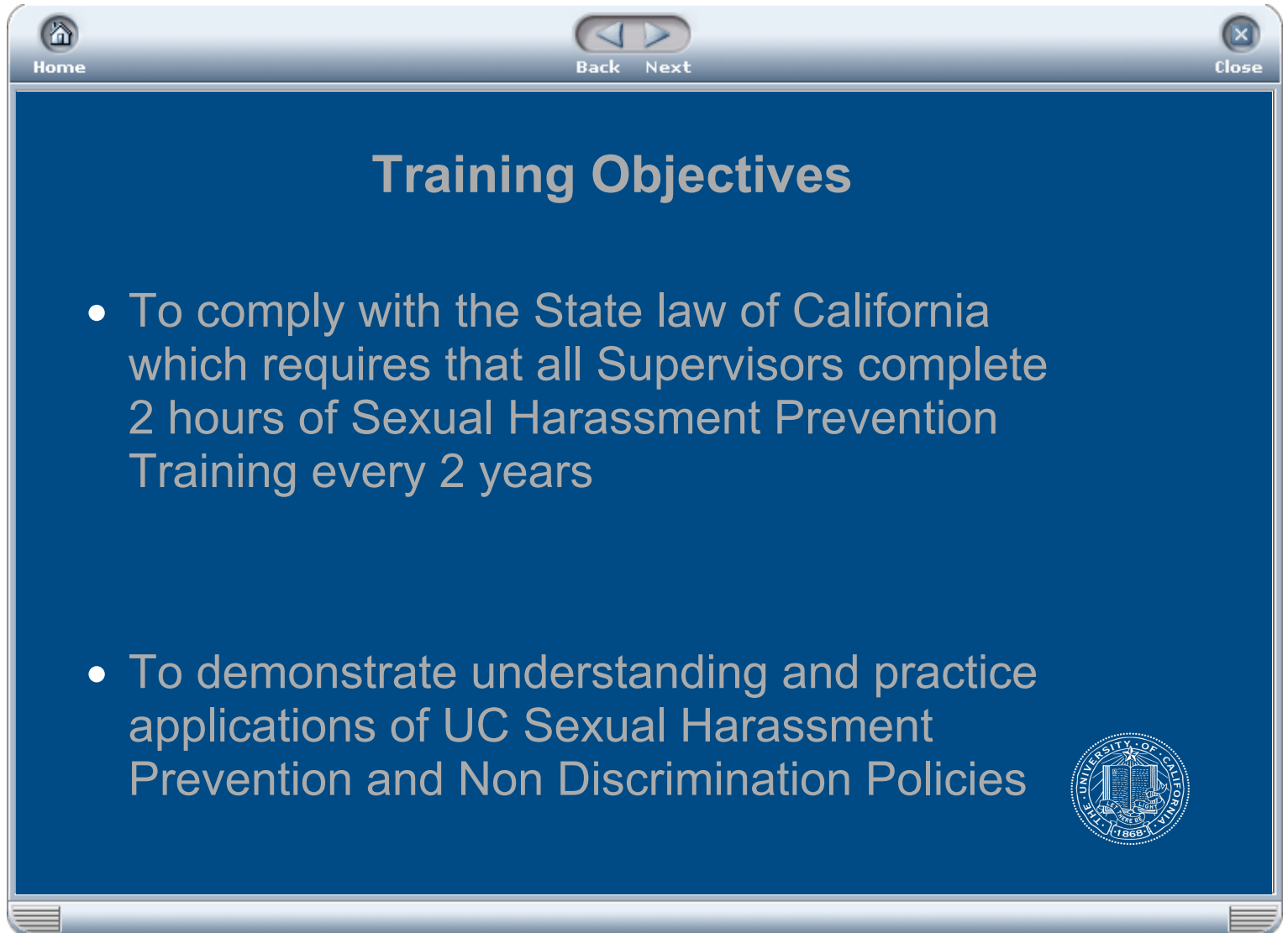
Home Back Next Close



University
of California


Sexual Harassment Prevention Training for Supervisors

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Training Objectives

- To comply with the State law of California which requires that all Supervisors complete 2 hours of Sexual Harassment Prevention Training every 2 years
- To demonstrate understanding and practice applications of UC Sexual Harassment Prevention and Non Discrimination Policies






Home Back Next Close

A Message from President Yudof

Consistent with our Principles of Community at the University of California, we are committed to fostering an environment where all persons affiliated with UC can work and learn together in an atmosphere that is inclusive, safe, rewarding and free of all forms of harassment, exploitation or intimidation. Every member of our community should be aware that UC strongly opposes any form of sexual harassment and that such behavior is prohibited both by law and by University policy. To this end, we each have a role in preventing and reporting known or suspected incidents of sexual harassment. Please remember that we have a variety of resources and services to assist you in this effort.

This course on Sexual Harassment Prevention Training that you are currently taking provides you with valuable tools to further understand sexual harassment, and other forms of harassment and discrimination, to help prevent its occurrence, and to aid in the reporting of incidents should they occur. This training reflects our values and strong commitment to compliance. However, beyond meeting the legal requirements is our sense of stewardship of the public trust which compels us to strive for new levels of academic achievement and public service that our students, fellow employees and the citizens of California have grown to expect of us since our founding.





Statement of Purpose

Although most UC faculty and staff would never intentionally subject another person to unwelcome comments or behaviors in the workplace, harassment and discrimination complaints do arise in the University with some frequency.

Some cases involve situations in which the two parties have very different views of what occurred or what is appropriate. While no course can provide absolute answers or rules that will eliminate all misunderstandings, or even all intentionally bad behavior, the purpose of this course is to raise awareness concerning the most common harassment issues while setting a tone of respect throughout the UC system.

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Home Back Next Close


Impact of Harassment and Discrimination

Aside from the emotional toll on employees, sexual harassment and discrimination in the workplace cause a great deal of harm, not only to employees who are harassed but also to others who are aware of harassment.

The Equal Employment Opportunity Commission released new data in 2011, revealing that 29.1% of the charges filed with the federal agency in 2010 were claims based on sex.

Negative effects include:

- emotional distress
- absenteeism
- low morale
- decreased productivity
- high turnover



In California: The average jury verdict for sexual harassment claims = \$1 million
The average cost of defending an employment claim = \$300,000

Legal and Financial Impact

Sexual harassment and discrimination complaints often lead to lawsuits which take time away from more productive activities, and pose a risk of financial loss for the University and for the individual harassers.

In 2010, **11,717 sexual harassment complaints** were filed with the U.S. Equal Employment Opportunity Commission (EEOC) and state fair employment practices agencies, resulting in over **\$48.4 million in damages**.

[EEOC Statistics](#)

Most employees do not rely on the EEOC to recover damages. Instead, they file lawsuits which often result in large settlements or jury awards against the employer.

Why is this Training Required?

California law mandates it.

All UC supervisors are legally required to complete two hours of training regarding sexual harassment, either in-person or online, every two years.

[California Government Code Section 12950 \(122k PDF\)](#)
(often referred to as Assembly Bill 1825)

The University of California is committed to creating and maintaining an environment that is free of harassment and discrimination.

Why are Faculty Considered Supervisors?

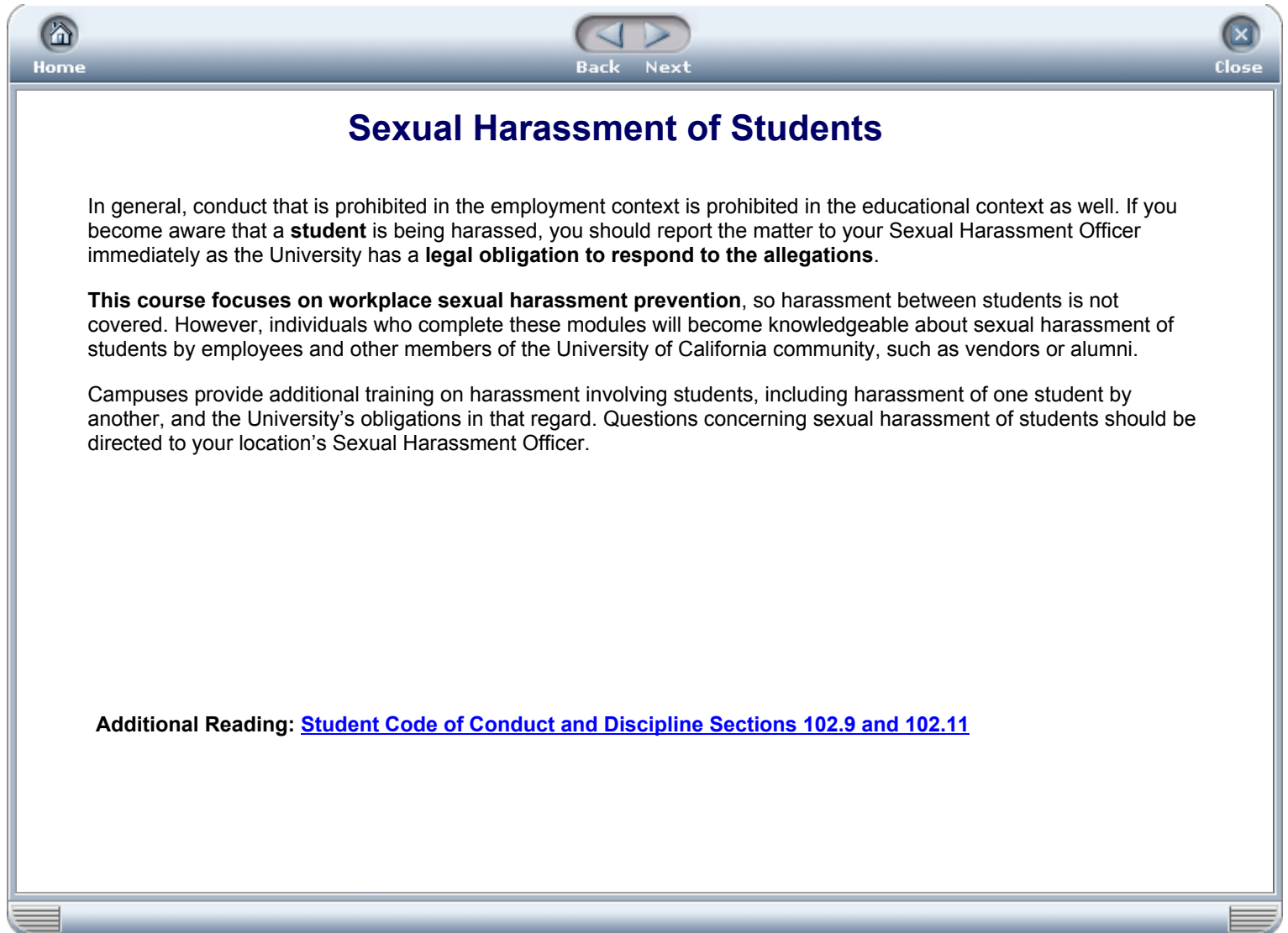
The University has determined that since most faculty will have some **supervisory or evaluative role** over other individuals at various times, it is necessary to include all faculty in this required training program.

Common faculty supervisory roles include:

- Directing the work of teaching assistants or researchers
- Supervising as a Principal Investigator on grants

This course also discusses the University's policy concerning consensual relationships between faculty and students, as well as academic freedom and its limitations.

All members of the University community have an ethical obligation to help prevent harassment and discrimination.



Sexual Harassment of Students

In general, conduct that is prohibited in the employment context is prohibited in the educational context as well. If you become aware that a **student** is being harassed, you should report the matter to your Sexual Harassment Officer immediately as the University has a **legal obligation to respond to the allegations**.

This course focuses on workplace sexual harassment prevention, so harassment between students is not covered. However, individuals who complete these modules will become knowledgeable about sexual harassment of students by employees and other members of the University of California community, such as vendors or alumni.


Campuses provide additional training on harassment involving students, including harassment of one student by another, and the University's obligations in that regard. Questions concerning sexual harassment of students should be directed to your location's Sexual Harassment Officer.

Additional Reading: [Student Code of Conduct and Discipline Sections 102.9 and 102.11](#)

Home Back Next Close

Course Requirements

- By law, you must spend **two hours** completing this online training to receive credit. You will be required at the end of this online training to certify that you have spent two hours completing the training.
- You do not need to complete this course in one sitting; you may exit the module and return at a later time to continue at the point where you left off.
- You do not need to answer all the questions correctly in order to pass. In fact, many questions do not have just one “correct” answer but instead are designed to help you identify key issues related to sexual harassment.





Home



Back Next



Close

Course Format

Through this course, you will learn about sexual harassment as well as other discrimination laws and policies and how they apply in the UC environment, as well as appropriate steps to prevent and respond to allegations of sexual harassment.



Key Case: these slides discuss actual legal cases related to sexual harassment and discrimination and explain how various courts have interpreted the relevant laws. Complete citations are listed on the UCOP Sexual Harassment Resources site under [Key Cases](#).



Check Your Understanding: these interactive slides provide the opportunity to assess your understanding of sexual harassment and discrimination concepts covered in this course.



Case Study: these fictional cases will help you evaluate appropriate responses to situations similar to those you may experience while working at UC.


You have completed approximately 5% of this course.

Home Back Next Close

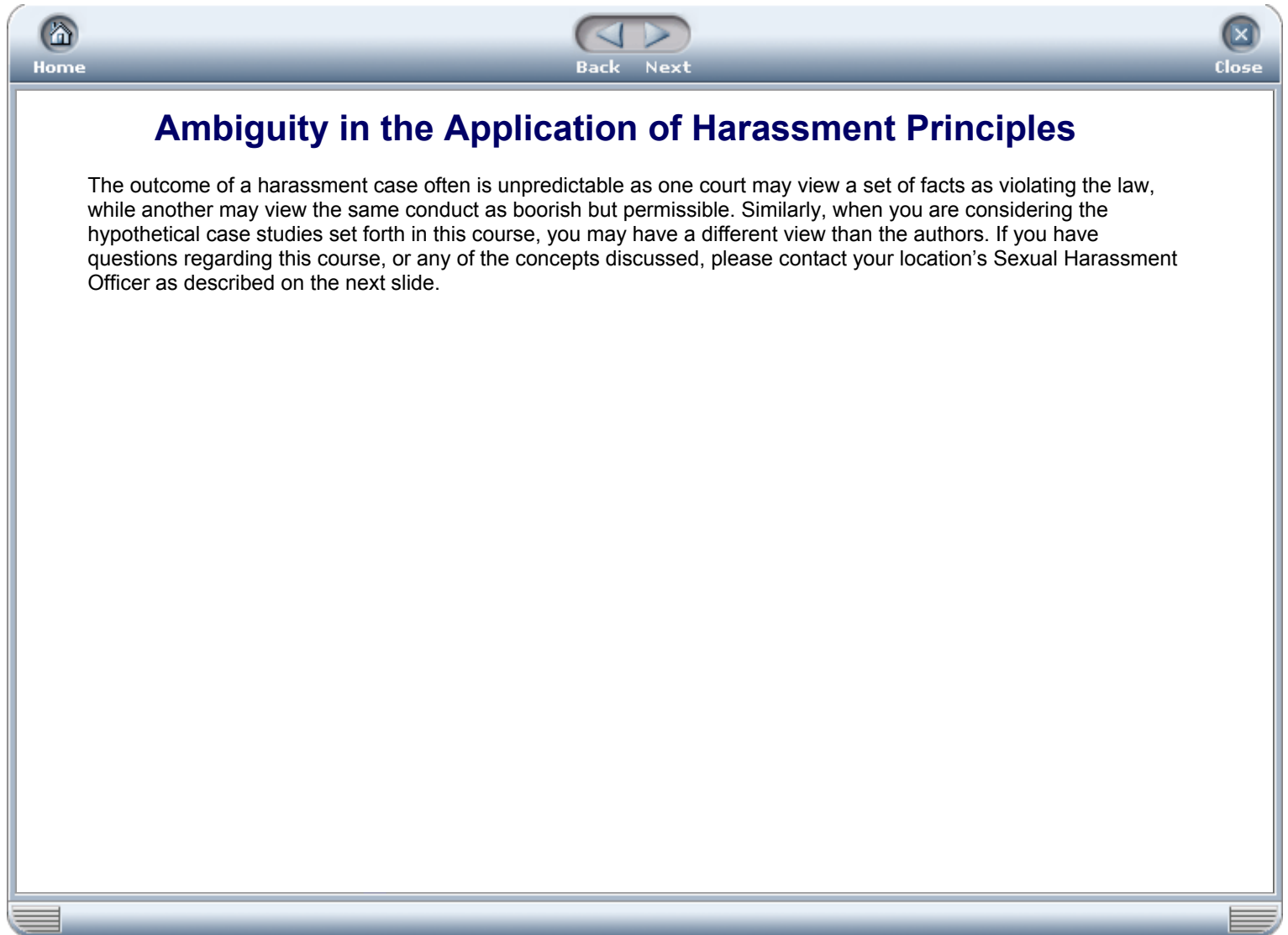
A Word of Caution

In taking this course, it may be easy to get caught up in the legal analysis as to whether specific conduct is unlawful or not.

Even though conduct may not violate the law, it may nevertheless violate University policy.

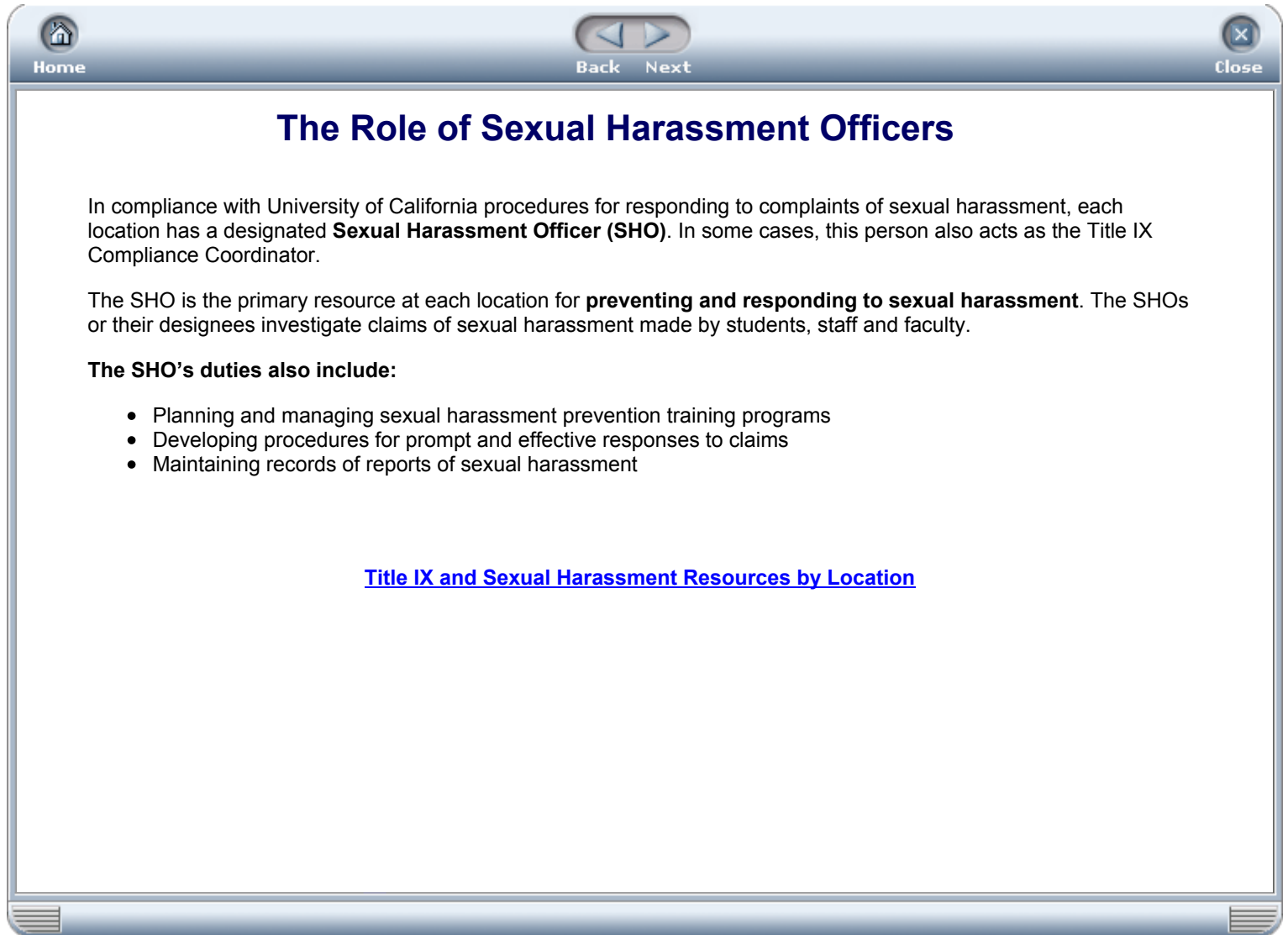


Supervisors are obligated to respond to and remediate violations of law OR policy.



Ambiguity in the Application of Harassment Principles

The outcome of a harassment case often is unpredictable as one court may view a set of facts as violating the law, while another may view the same conduct as boorish but permissible. Similarly, when you are considering the hypothetical case studies set forth in this course, you may have a different view than the authors. If you have questions regarding this course, or any of the concepts discussed, please contact your location's Sexual Harassment Officer as described on the next slide.



The Role of Sexual Harassment Officers

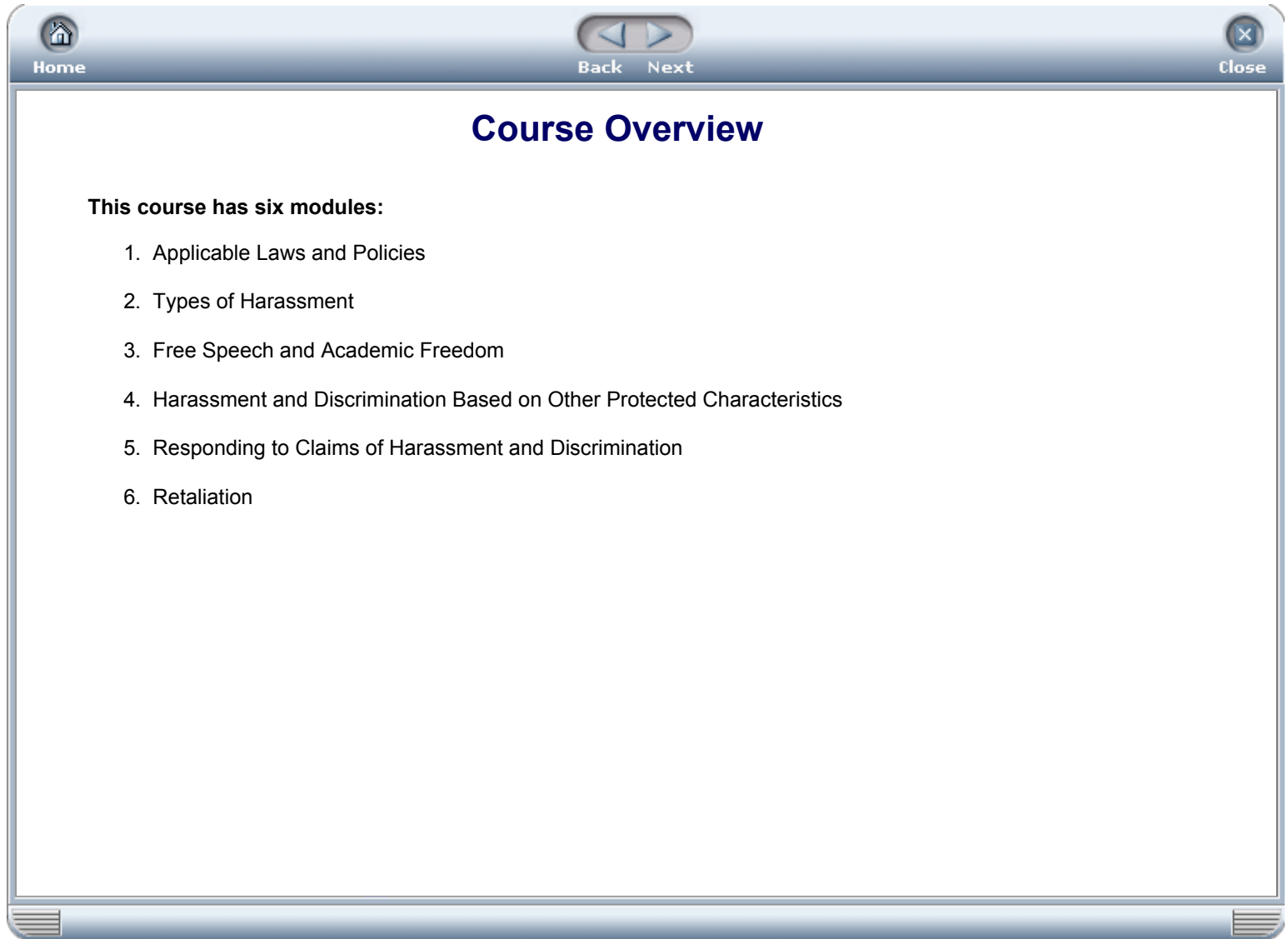
In compliance with University of California procedures for responding to complaints of sexual harassment, each location has a designated **Sexual Harassment Officer (SHO)**. In some cases, this person also acts as the Title IX Compliance Coordinator.

The SHO is the primary resource at each location for **preventing and responding to sexual harassment**. The SHOs or their designees investigate claims of sexual harassment made by students, staff and faculty.

The SHO's duties also include:

- Planning and managing sexual harassment prevention training programs
- Developing procedures for prompt and effective responses to claims
- Maintaining records of reports of sexual harassment

[Title IX and Sexual Harassment Resources by Location](#)

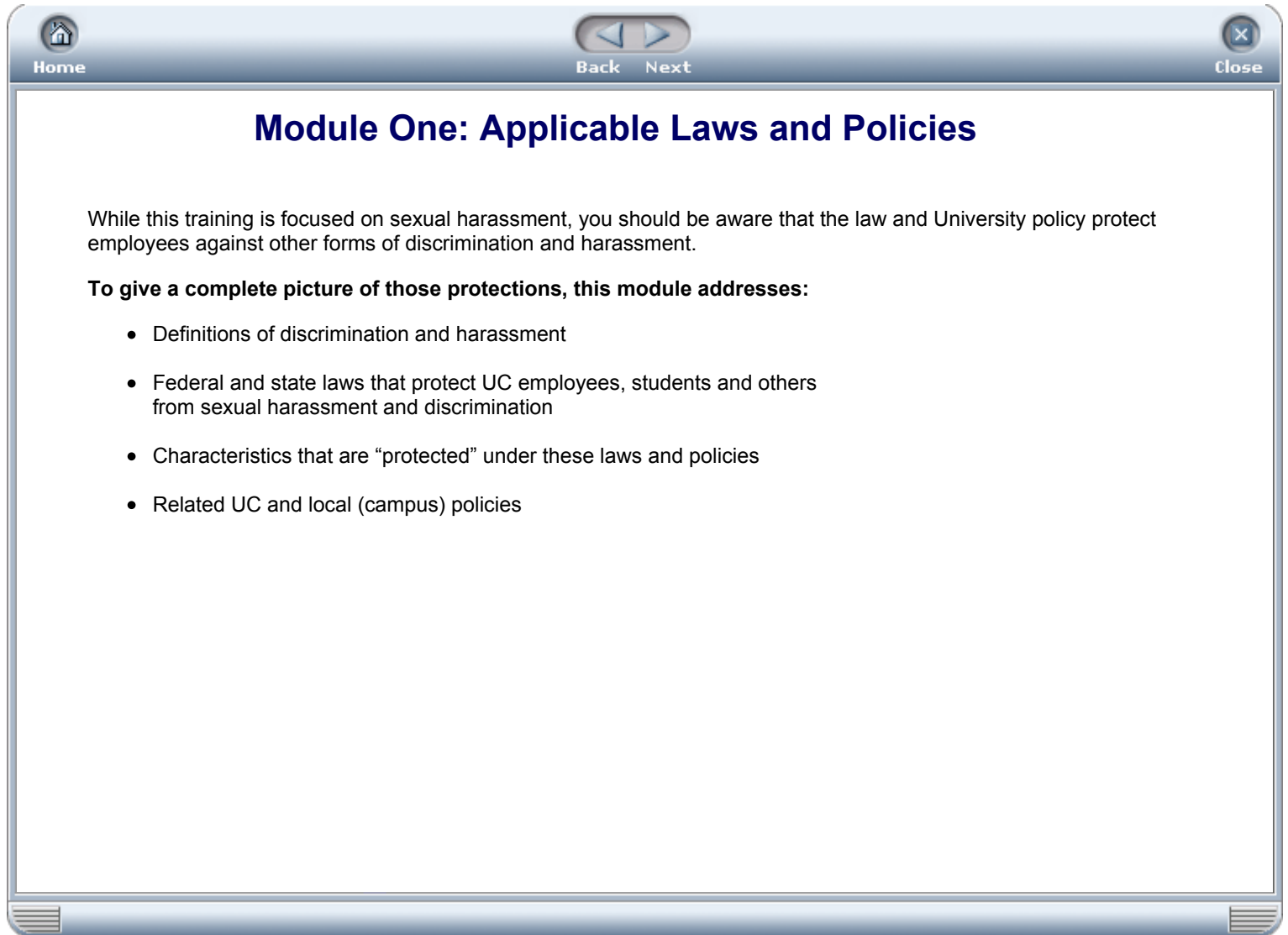


The slide features a blue header bar with navigation controls: a home icon labeled 'Home', left and right arrow icons labeled 'Back' and 'Next', and a close icon labeled 'Close'. The main content area is white with a blue title 'Course Overview' centered at the top. Below the title, the text 'This course has six modules:' is followed by a numbered list of six items. The slide has a blue footer bar with a small icon on the left and a small icon on the right.

Course Overview

This course has six modules:

1. Applicable Laws and Policies
2. Types of Harassment
3. Free Speech and Academic Freedom
4. Harassment and Discrimination Based on Other Protected Characteristics
5. Responding to Claims of Harassment and Discrimination
6. Retaliation

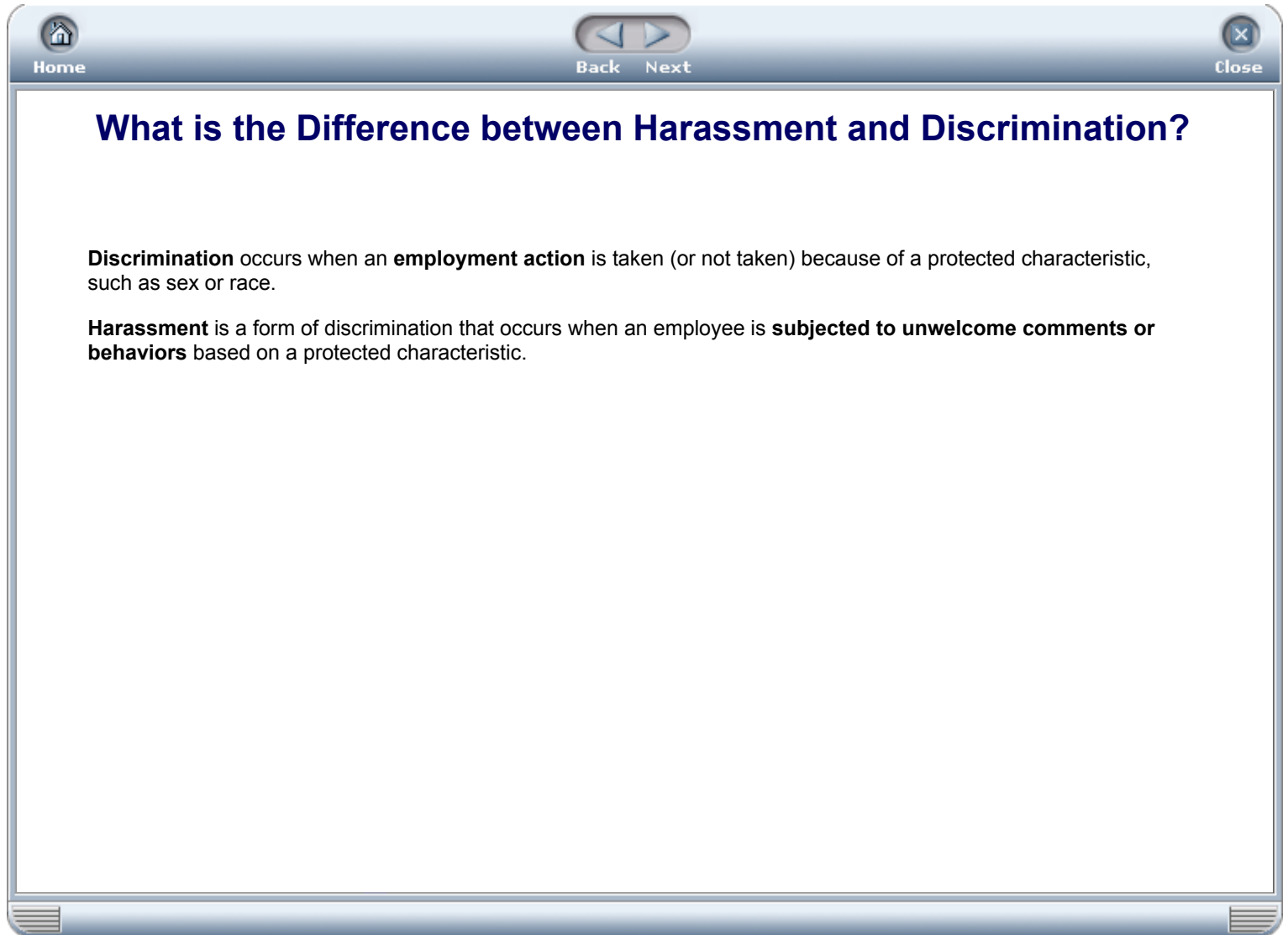


Module One: Applicable Laws and Policies

While this training is focused on sexual harassment, you should be aware that the law and University policy protect employees against other forms of discrimination and harassment.

To give a complete picture of those protections, this module addresses:

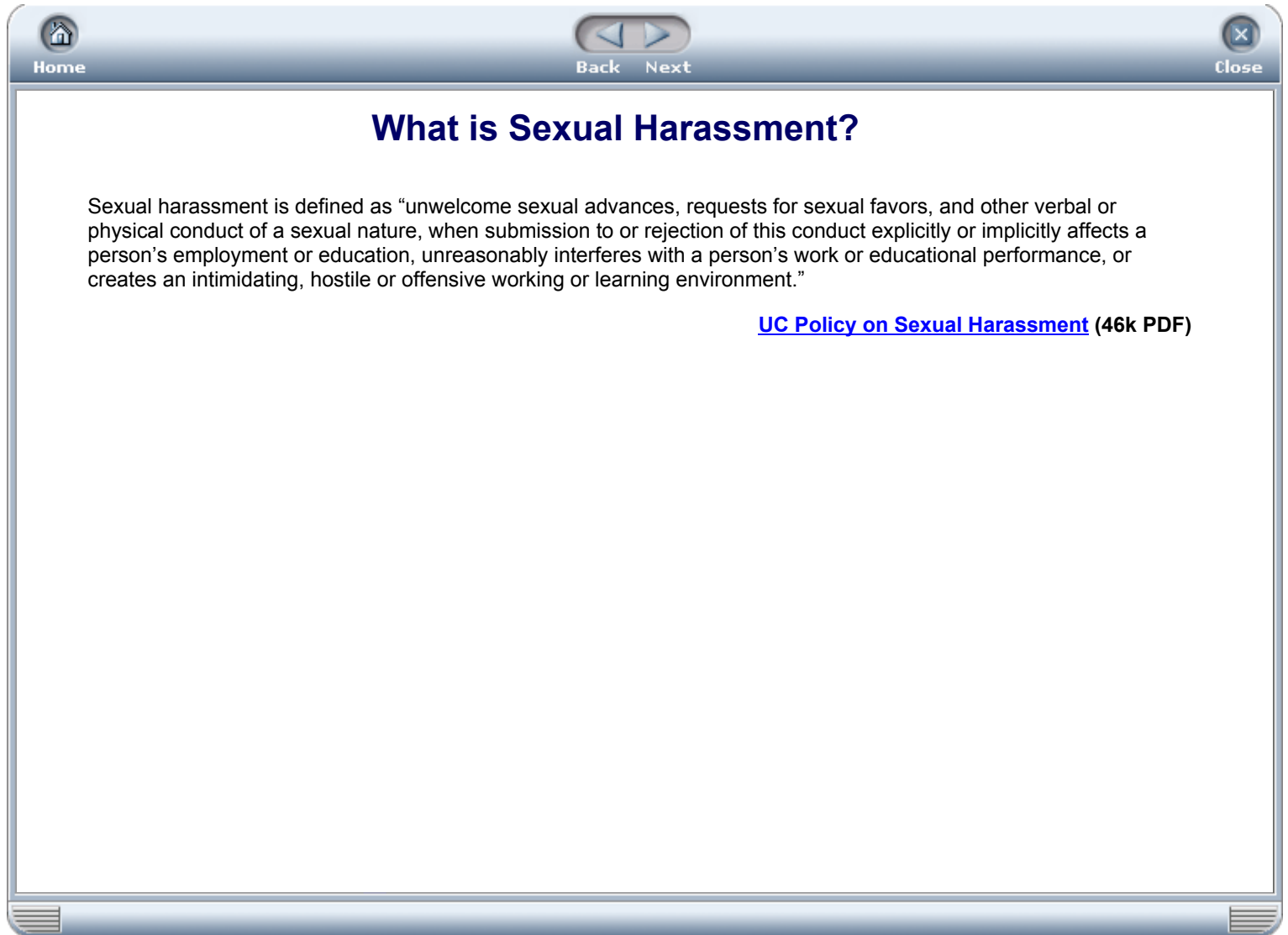
- Definitions of discrimination and harassment
- Federal and state laws that protect UC employees, students and others from sexual harassment and discrimination
- Characteristics that are “protected” under these laws and policies
- Related UC and local (campus) policies



What is the Difference between Harassment and Discrimination?

Discrimination occurs when an **employment action** is taken (or not taken) because of a protected characteristic, such as sex or race.

Harassment is a form of discrimination that occurs when an employee is **subjected to unwelcome comments or behaviors** based on a protected characteristic.



Home Back Next Close

What is Sexual Harassment?

Sexual harassment is defined as “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when submission to or rejection of this conduct explicitly or implicitly affects a person’s employment or education, unreasonably interferes with a person’s work or educational performance, or creates an intimidating, hostile or offensive working or learning environment.”


[UC Policy on Sexual Harassment \(46k PDF\)](#)

Home Back Next Close

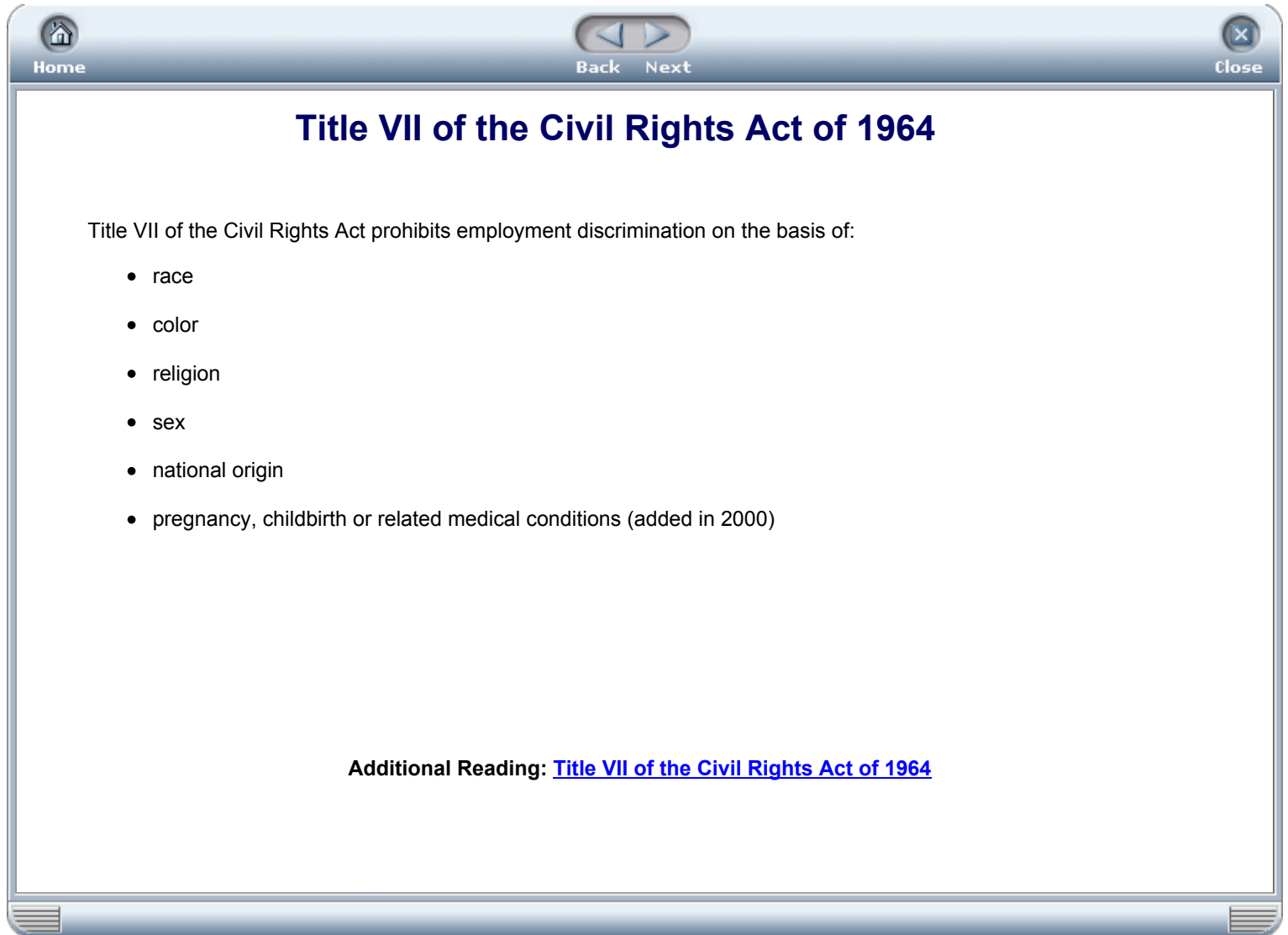
Federal Law

The principal federal statutes prohibiting sexual harassment of employees in the University context are:

- Title VII of the Civil Rights Act of 1964
- Title IX of the Education Amendments of 1972



A black and white photograph showing a perspective view of a library aisle. On the left, there are rows of bookshelves filled with books. In the foreground, a long, narrow table is visible, likely for reading or study. The lighting is soft, and the background is slightly blurred, emphasizing the depth of the aisle.



Title VII of the Civil Rights Act of 1964

Title VII of the Civil Rights Act prohibits employment discrimination on the basis of:

- race
- color
- religion
- sex
- national origin
- pregnancy, childbirth or related medical conditions (added in 2000)

Additional Reading: [Title VII of the Civil Rights Act of 1964](#)


Home Back Next Close

Key Case: Meritor v. Vinson (1986)

In the case of *Meritor v. Vinson* (1986), the US Supreme Court held that **sexual harassment** by a supervisor constitutes **discrimination on the basis of sex**.

The Court also stated that Title VII provides a remedy for employees who suffer a hostile or abusive work environment **even if they do not suffer a tangible economic loss**, such as termination of their employment.

Meritor v. Vinson, 477 U.S. 57 (1986)



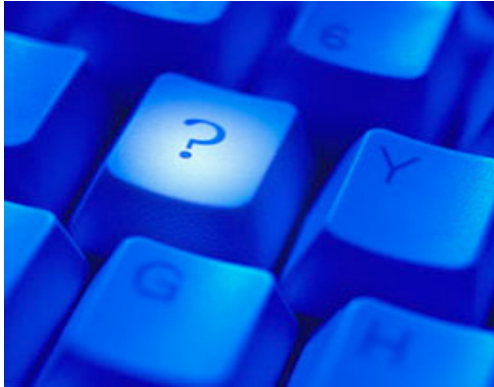
You have completed approximately 10% of this course.

Home

Back Next

Close

Check Your Understanding



True or False:
Title VII of the Civil Rights Act of 1964 explicitly prohibits sexual harassment in employment.

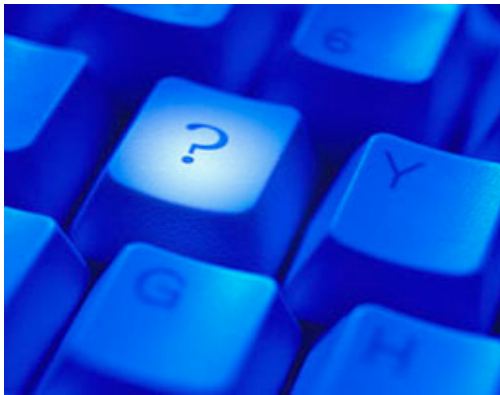
True

False

Submit

HomeBack NextClose

Check Your Understanding



True or False:
Title VII of the Civil Rights Act of 1964 explicitly prohibits sexual harassment in employment.


True **That is CORRECT.**
Title VII prohibits employment discrimination but does not explicitly mention sexual harassment. However, the Supreme Court has held that sexual harassment is a form of sex discrimination. Click the Next button to continue.

False

HomeBack NextClose

Case Study: Alice Assistant

Alice Assistant has worked for the Administrative Manager of the campus Recreation Center for many years. A new Administrative Manager, Matt Manager, was hired last year to replace the former Manager, who retired. Ms. Assistant has complained to Human Resources that Mr. Manager is creating a hostile environment. She contends that since he arrived, he has assigned her several new projects in addition to her already heavy workload. He has told her if she does not complete these new projects in the next month, he will begin looking for a new assistant. He has been overheard to say that he will not tolerate anything less than excellence from his staff members. Ms. Assistant believes, and other assistants in the Department agree, that Mr. Manager's deadlines are patently unreasonable.



Should Ms. Assistant's complaint be treated as a claim of hostile environment harassment?


Yes

No

Home Back Next Close

Case Study: Alice Assistant

Alice Assistant has worked for the Administrative Manager of the campus Recreation Center for many years. A new Administrative Manager, Matt Manager, was hired last year to replace the former Manager, who retired. Ms. Assistant has complained to Human Resources that Mr. Manager is creating a hostile environment. She contends that since he arrived, he has assigned her several new projects in addition to her already heavy workload. He has told her if she does not complete these new projects in the next month, he will begin looking for a new assistant. He has been overheard to say that he will not tolerate anything less than excellence from his staff members. Ms. Assistant believes, and other assistants in the Department agree, that Mr. Manager's deadlines are patently unreasonable.



Should Ms. Assistant's complaint be treated as a claim of hostile environment harassment?

Yes **That is CORRECT.**

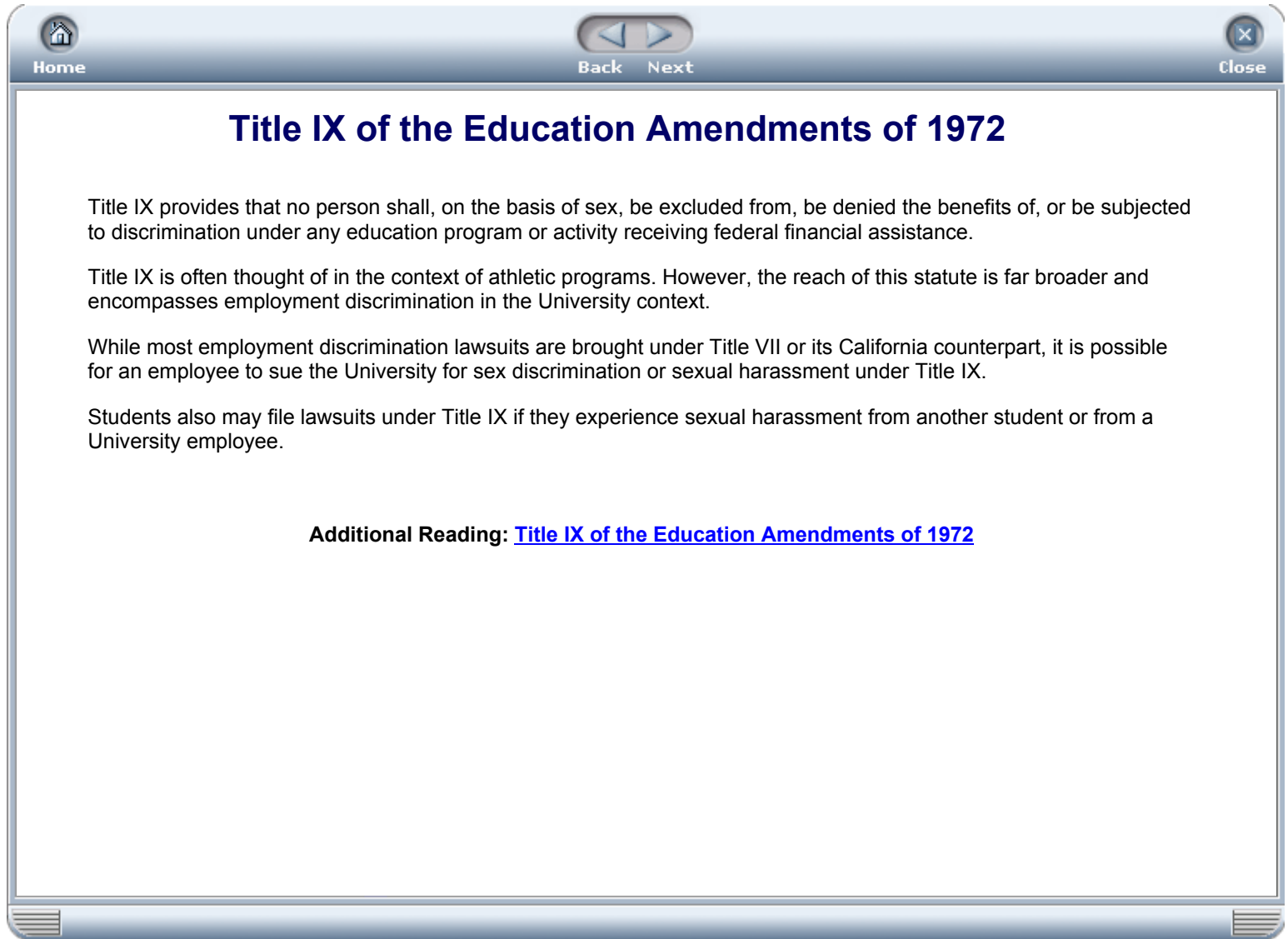
No **Click the Next button to read a discussion of this case study.**

Case Study: Discussion

Ms. Assistant has not alleged that Mr. Manager has assigned her additional work or is imposing strict standards because of a protected characteristic, such as sex. The phrase “hostile environment” is misinterpreted or used rather loosely by many people; however, it is important for supervisors to understand that “hostile environment” harassment relates to **harassment that is based on a protected characteristic**.

Hostile work environment harassment occurs when unwelcome comments or conduct based on sex, race or other legally protected characteristics unreasonably interferes with an employee’s work performance or creates an intimidating, hostile or offensive work environment.

Of course, there are still good reasons to try to remedy Ms. Assistant’s situation, but the discrimination laws do not come into play.



Title IX of the Education Amendments of 1972

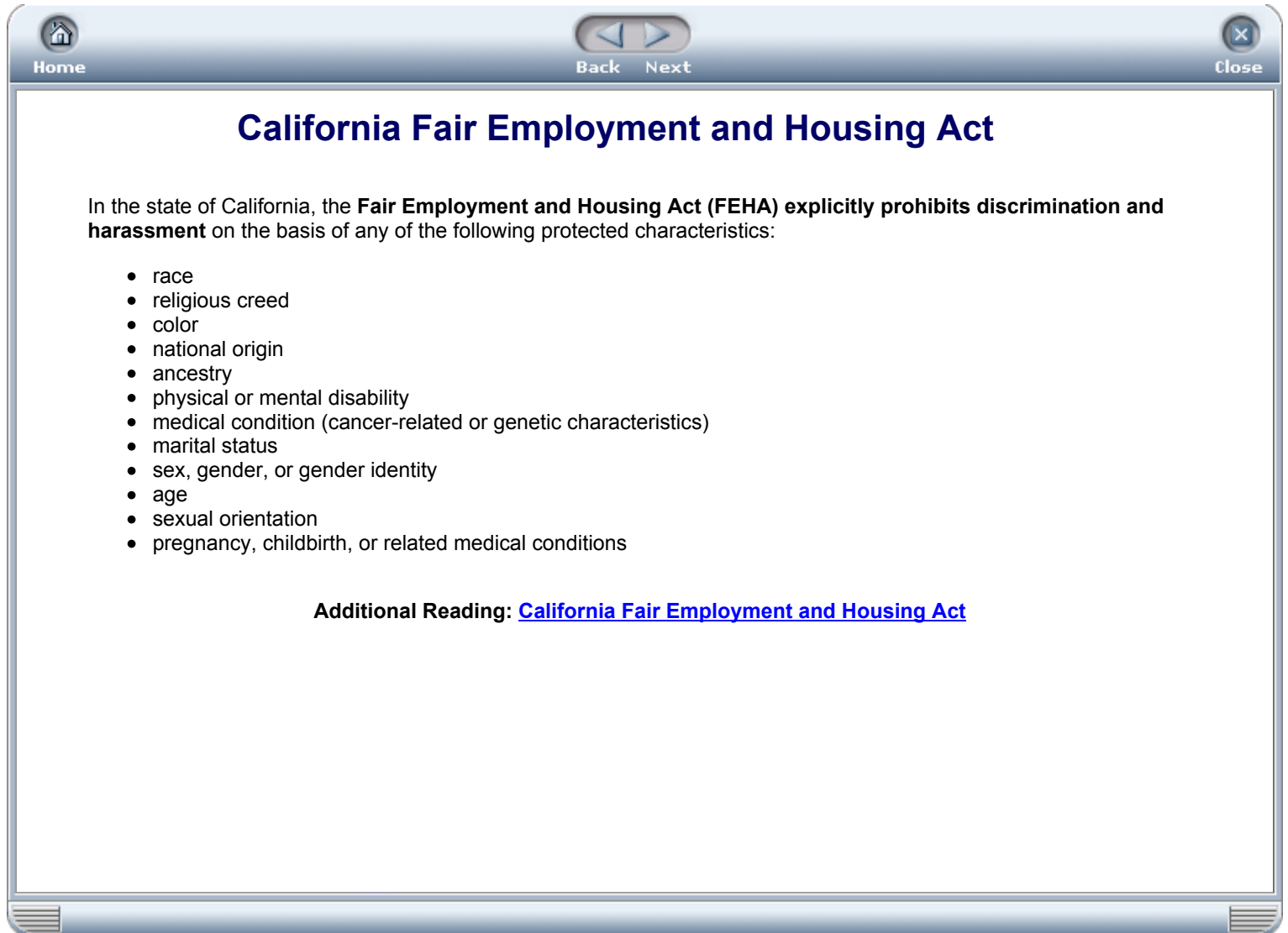
Title IX provides that no person shall, on the basis of sex, be excluded from, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.

Title IX is often thought of in the context of athletic programs. However, the reach of this statute is far broader and encompasses employment discrimination in the University context.

While most employment discrimination lawsuits are brought under Title VII or its California counterpart, it is possible for an employee to sue the University for sex discrimination or sexual harassment under Title IX.

Students also may file lawsuits under Title IX if they experience sexual harassment from another student or from a University employee.

Additional Reading: [Title IX of the Education Amendments of 1972](#)



California Fair Employment and Housing Act

In the state of California, the **Fair Employment and Housing Act (FEHA)** explicitly prohibits discrimination and **harassment** on the basis of any of the following protected characteristics:

- race
- religious creed
- color
- national origin
- ancestry
- physical or mental disability
- medical condition (cancer-related or genetic characteristics)
- marital status
- sex, gender, or gender identity
- age
- sexual orientation
- pregnancy, childbirth, or related medical conditions


Additional Reading: [California Fair Employment and Housing Act](#)

Home Back Next Close

Case Study

Annie Hall is a teaching assistant in the Department of Chemistry. Ms. Hall is not a conventionally feminine dresser, avoids makeup and wears her hair short.

Several students and staff members have made derogatory comments concerning Ms. Hall's masculine appearance. Ms. Hall has now brought these comments to the attention of the chair.



Should the chair treat Ms. Hall's complaint as a claim of hostile environment harassment?

Yes


No

Home Back Next Close

Case Study

Annie Hall is a teaching assistant in the Department of Chemistry. Ms. Hall is not a conventionally feminine dresser, avoids makeup and wears her hair short.

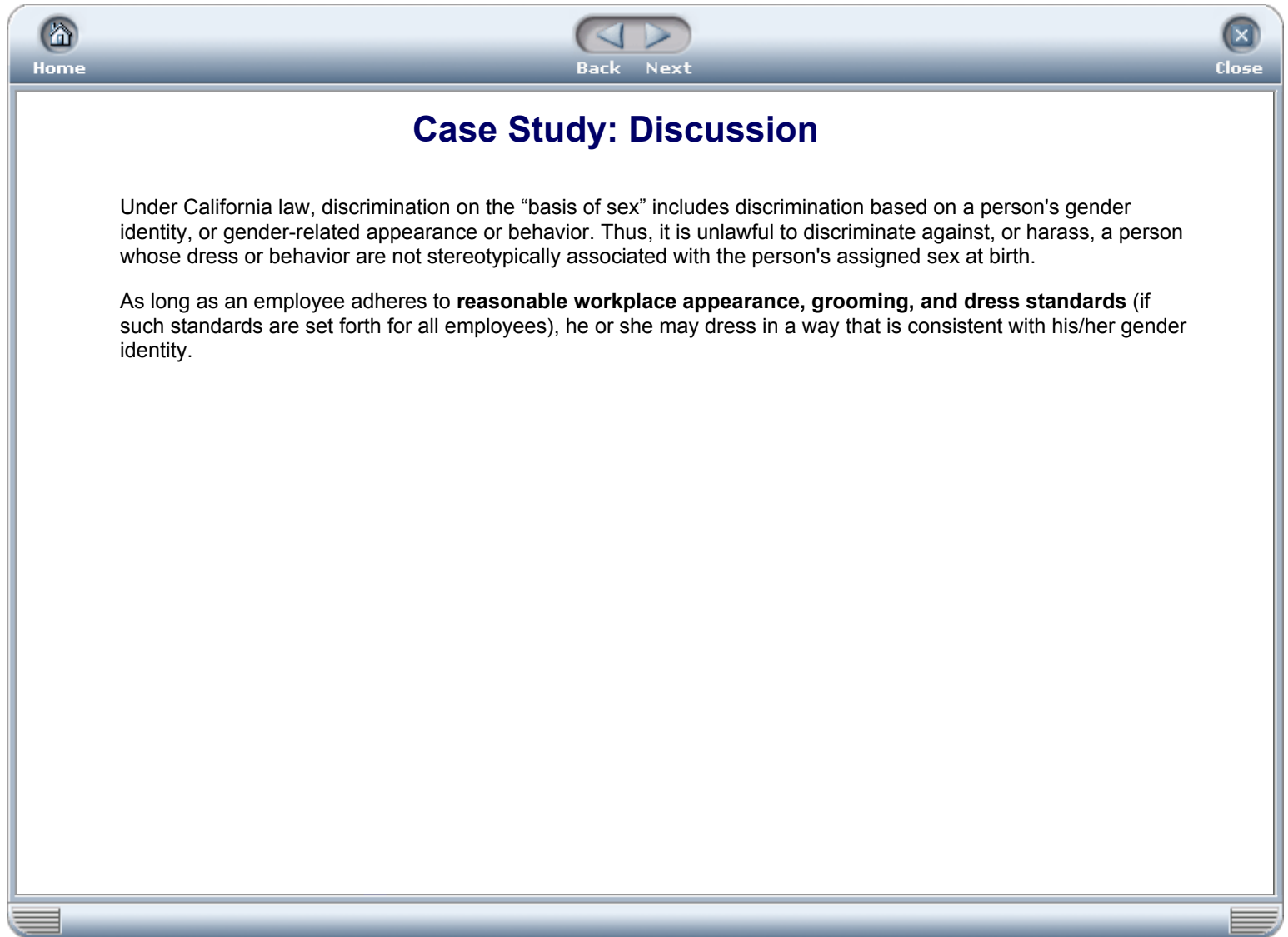
Several students and staff members have made derogatory comments concerning Ms. Hall's masculine appearance. Ms. Hall has now brought these comments to the attention of the chair.



Should the chair treat Ms. Hall's complaint as a claim of hostile environment harassment?

Yes **That is CORRECT.**

No **Click the Next button to read a discussion of this case study.**



Home

Back Next

Close

Case Study: Discussion

Under California law, discrimination on the “basis of sex” includes discrimination based on a person's gender identity, or gender-related appearance or behavior. Thus, it is unlawful to discriminate against, or harass, a person whose dress or behavior are not stereotypically associated with the person's assigned sex at birth.

As long as an employee adheres to **reasonable workplace appearance, grooming, and dress standards** (if such standards are set forth for all employees), he or she may dress in a way that is consistent with his/her gender identity.



Home



Back Next



Close

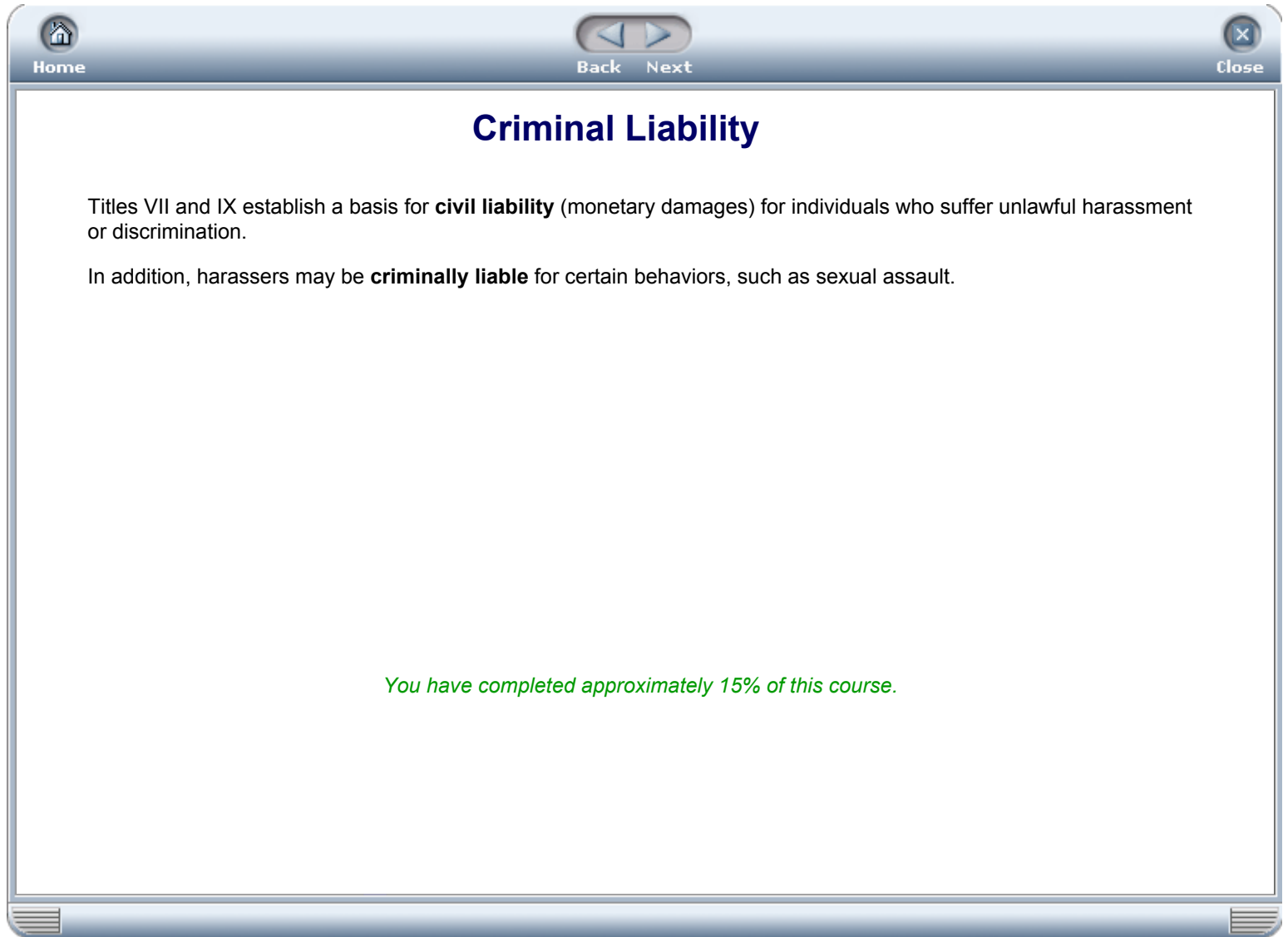
Laws Protecting Patients from Sexual Harassment



Under California Civil Code Section 51.9, a physician, psychotherapist, or dentist may be liable for damages for **sexual harassment of a patient**.

In order to succeed on such a claim, the patient must prove a number of elements. Most importantly, he or she must prove that his/her physician, psychotherapist or dentist made sexual advances, solicitations, sexual requests, or demands for sexual compliance by the patient, or engaged in other verbal, visual, or physical conduct of a sexual or hostile nature based on gender, that were unwelcome and pervasive or severe.

Additional Reading: [California Civil Code Section 51.9](#)



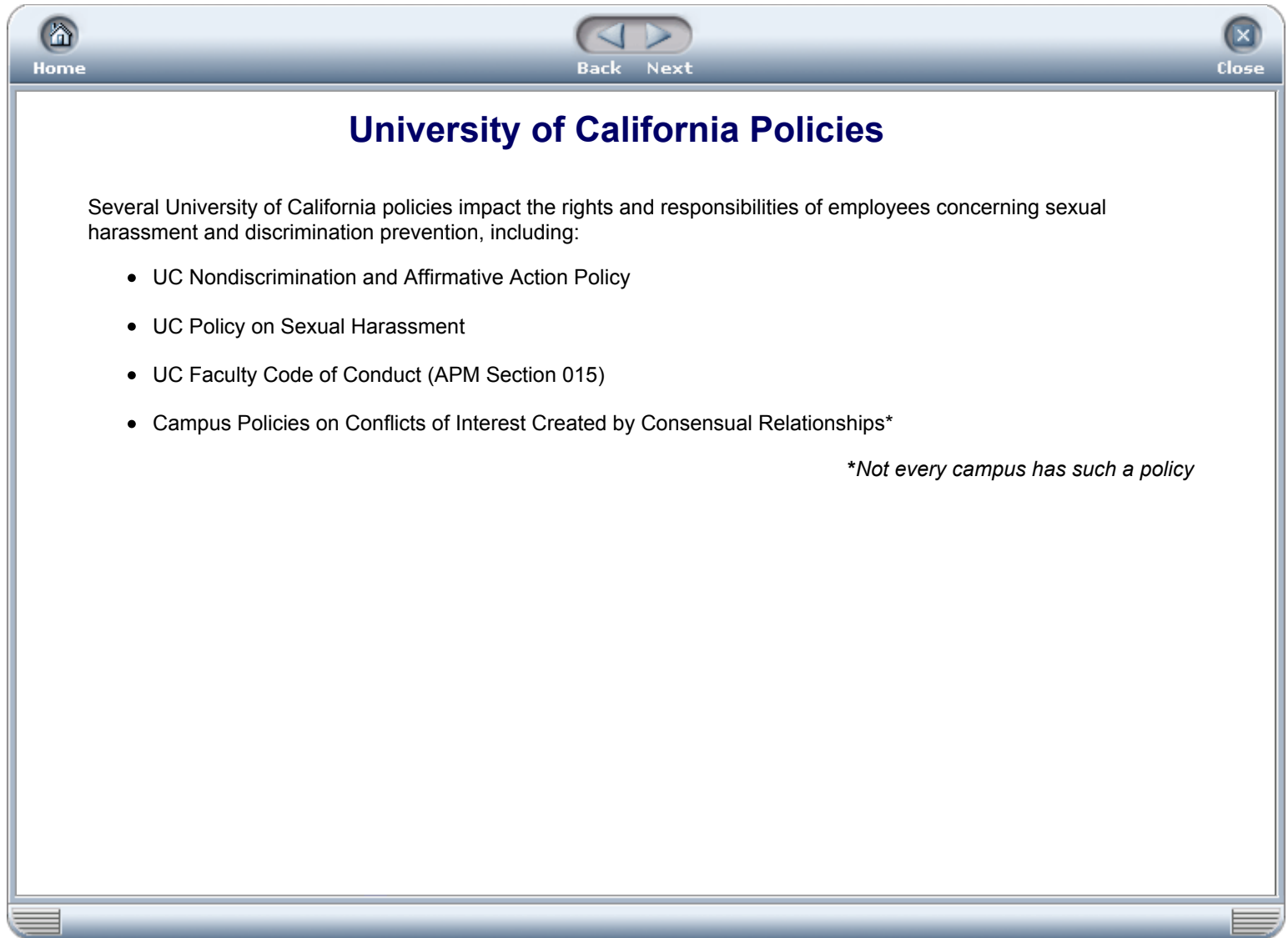
Home Back Next Close

Criminal Liability

Titles VII and IX establish a basis for **civil liability** (monetary damages) for individuals who suffer unlawful harassment or discrimination.

In addition, harassers may be **criminally liable** for certain behaviors, such as sexual assault.

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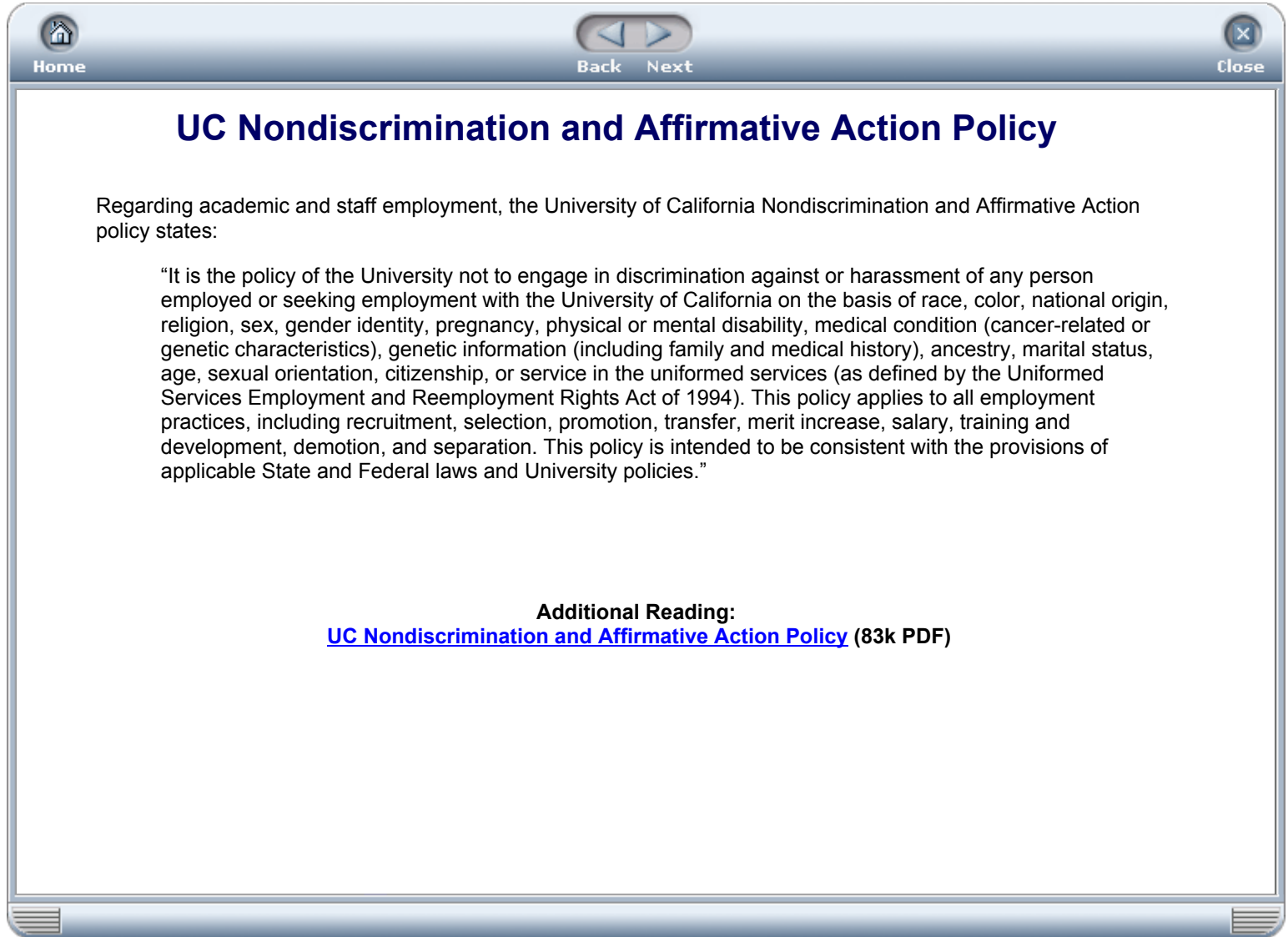


University of California Policies

Several University of California policies impact the rights and responsibilities of employees concerning sexual harassment and discrimination prevention, including:

- UC Nondiscrimination and Affirmative Action Policy
- UC Policy on Sexual Harassment
- UC Faculty Code of Conduct (APM Section 015)
- Campus Policies on Conflicts of Interest Created by Consensual Relationships*

**Not every campus has such a policy*

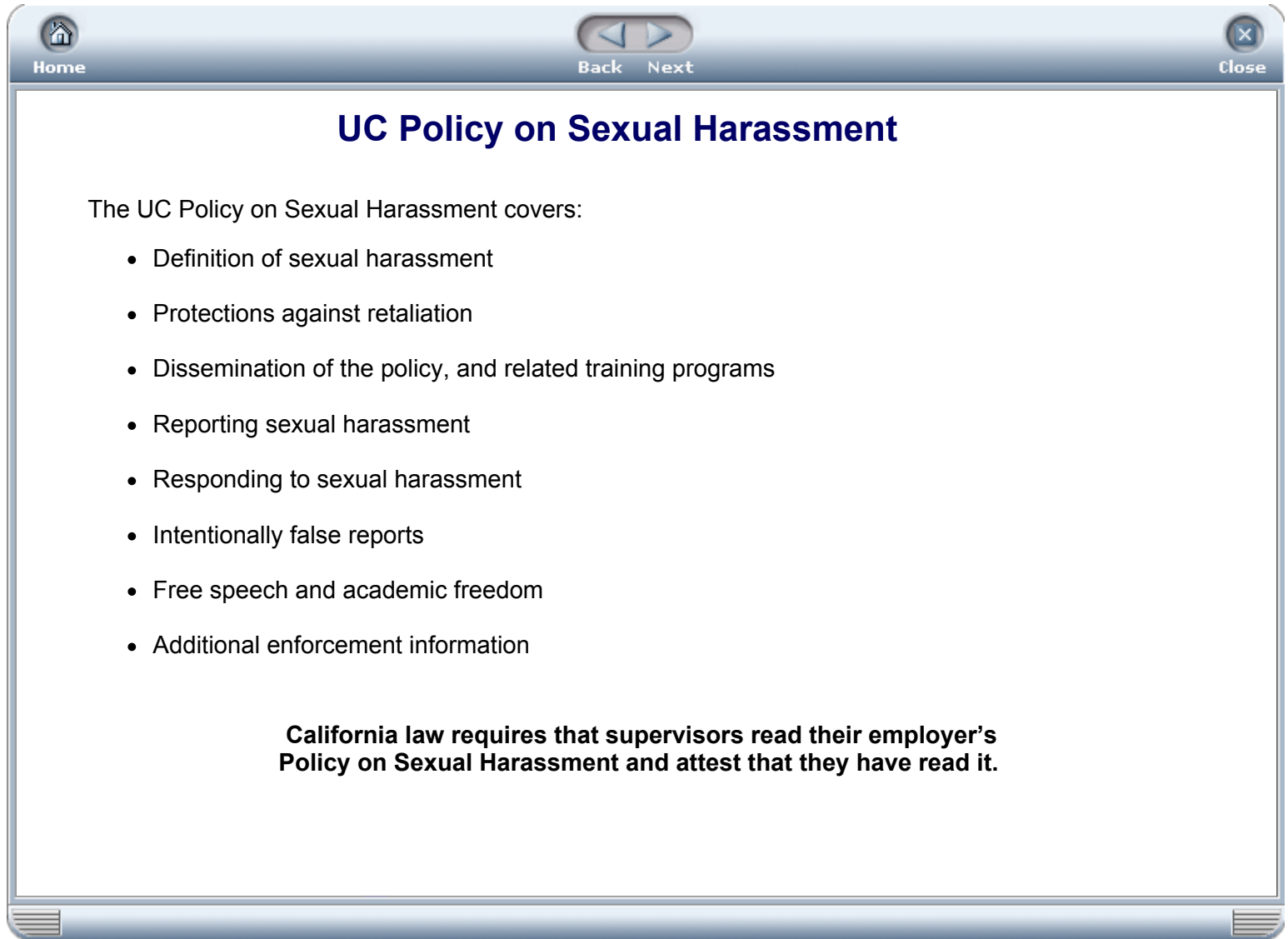


UC Nondiscrimination and Affirmative Action Policy

Regarding academic and staff employment, the University of California Nondiscrimination and Affirmative Action policy states:

“It is the policy of the University not to engage in discrimination against or harassment of any person employed or seeking employment with the University of California on the basis of race, color, national origin, religion, sex, gender identity, pregnancy, physical or mental disability, medical condition (cancer-related or genetic characteristics), genetic information (including family and medical history), ancestry, marital status, age, sexual orientation, citizenship, or service in the uniformed services (as defined by the Uniformed Services Employment and Reemployment Rights Act of 1994). This policy applies to all employment practices, including recruitment, selection, promotion, transfer, merit increase, salary, training and development, demotion, and separation. This policy is intended to be consistent with the provisions of applicable State and Federal laws and University policies.”

Additional Reading:
[UC Nondiscrimination and Affirmative Action Policy \(83k PDF\)](#)



The slide is presented in a window with a blue header bar. The header bar contains a 'Home' button with a house icon, a 'Back' button with a left arrow, a 'Next' button with a right arrow, and a 'Close' button with an 'X' icon. The main content area is white with a blue border. The title 'UC Policy on Sexual Harassment' is centered at the top in a large, bold, blue font. Below the title, the text 'The UC Policy on Sexual Harassment covers:' is followed by a bulleted list of eight items. At the bottom of the slide, a bold black text block states a California law requirement for supervisors.

UC Policy on Sexual Harassment

The UC Policy on Sexual Harassment covers:

- Definition of sexual harassment
- Protections against retaliation
- Dissemination of the policy, and related training programs
- Reporting sexual harassment
- Responding to sexual harassment
- Intentionally false reports
- Free speech and academic freedom
- Additional enforcement information

California law requires that supervisors read their employer's Policy on Sexual Harassment and attest that they have read it.

UNIVERSITY OF CALIFORNIA POLICY ON SEXUAL HARASSMENT

A. Introduction

The University of California is committed to creating and maintaining a community where all persons who participate in University programs and activities can work and learn together in an atmosphere free of all forms of harassment, exploitation, or intimidation. Every member of the University community should be aware that the University is strongly opposed to sexual harassment, and that such behavior is prohibited both by law and by University policy. The University will respond promptly and effectively to reports of sexual harassment, and will take appropriate action to prevent, to correct, and if necessary, to discipline behavior that violates this policy.

This policy applies to the University of California campuses, the DOE Laboratories, the Medical Centers, and the Office of the President, including Agriculture and Natural Resources, and all auxiliary University locations (*the locations*).

B. Definition of Sexual Harassment

Sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when submission to or rejection of this conduct explicitly or implicitly affects a person's employment or education, unreasonably interferes with a person's work or educational performance, or creates an intimidating, hostile or offensive working or learning environment. In the interest of preventing sexual harassment, the University will respond to reports of any such conduct.

Sexual harassment may include incidents between any members of the University community, including faculty and other academic appointees, staff, coaches, housestaff, students, and non-student or non-employee participants in University programs, such as vendors, contractors, visitors, and patients. Sexual harassment may occur in hierarchical relationships or between peers, or between persons of the same sex or opposite sex.

In determining whether the reported conduct constitutes sexual harassment, consideration shall be given to the record of the conduct as a whole and to the totality of the circumstances, including the context in which the conduct occurred.

This policy covers unwelcome conduct of a sexual nature. Consensual romantic relationships between members of the University community are subject to other University policies, for example, those governing faculty-student relationships are detailed in the Faculty Code of Conduct.¹ While romantic relationships between members of the University community may

¹ The Faculty Code of Conduct may be found in Academic Personnel Manual (APM) section 015.

begin as consensual, they may evolve into situations that lead to charges of sexual harassment, subject to this policy.

Harassment that is not sexual in nature but is based on gender, sex-stereotyping, or sexual orientation also is prohibited by the University's nondiscrimination policies² if it is sufficiently severe to deny or limit a person's ability to participate in or benefit from University educational programs, employment, or services. While discrimination based on these factors may be distinguished from sexual harassment, these types of discrimination may contribute to the creation of a hostile work or academic environment. Thus, in determining whether a hostile environment due to sexual harassment exists, the University may take into account acts of discrimination based on gender, sex-stereotyping, or sexual orientation.

C. Retaliation

This policy also prohibits retaliation against a person who reports sexual harassment, assists someone with a report of sexual harassment, or participates in any manner in an investigation or resolution of a sexual harassment report. Retaliation includes threats, intimidation, reprisals, and/or adverse actions related to employment or education.

D. Dissemination of the Policy, Educational Programs, and Employee Training

As part of the University's commitment to providing a harassment-free working and learning environment, this policy shall be disseminated widely to the University community through publications, websites, new employee orientations, student orientations, and other appropriate channels of communication. The locations shall make educational materials available to all members of the University community to promote compliance with this policy and familiarity with local reporting procedures. In addition, the locations shall designate University employees responsible for reporting sexual harassment and provide training to those designated employees. Generally, such persons include supervisors, managers, academic administrators, deans, department chairs, student advisors, graduate advisors, residence hall staff, coaches, law enforcement officers, student judicial affairs staff, and health center staff. Each location shall post a copy of this policy in a prominent place on its website.

E. Reports of Sexual Harassment

Any member of the University community may report conduct that may constitute sexual harassment under this policy. In addition, supervisors, managers, and other designated employees are responsible for taking whatever action is necessary to prevent sexual harassment, to correct it when it occurs, and to report it promptly to the Title IX Compliance Coordinator (Sexual Harassment Officer) or other appropriate official designated to review and investigate

² University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment; Nondiscrimination and Affirmative Action Policy Statement for University of California Publications Regarding Employment Practices; Academic Personnel Policy 035, Affirmative Action and Nondiscrimination in Employment; Personnel Policies for Staff Members 12, Nondiscrimination in Employment; University of California Policies Applying to Campus Activities, Organizations, and Students; and Nondiscrimination Policy Statement for University of California Publications Regarding Student-Related Matters.

sexual harassment complaints. An individual also may file a complaint or grievance alleging sexual harassment under the applicable University complaint resolution or grievance procedure (*University of California Procedures for Responding to Reports of Sexual Harassment, Appendix I: University Complaint Resolution and Grievance Procedures*).

F. Response to Sexual Harassment

The locations shall provide a prompt and effective response to reports of sexual harassment in accordance with the *University of California Procedures for Responding to Reports of Sexual Harassment (Procedures)*. A prompt and effective response may include early resolution, formal investigation, and/or targeted training or educational programs. Upon findings of sexual harassment, the University may offer remedies to the individual or individuals harmed by the harassment consistent with applicable complaint resolution and grievance procedures (*Procedures, Appendix I: University Complaint Resolution and Grievance Procedures*). Such remedies may include counseling, an opportunity to repeat course work without penalty, changes to student housing assignments, or other appropriate interventions. Any member of the University community who is found to have engaged in sexual harassment is subject to disciplinary action up to and including dismissal in accordance with the applicable University disciplinary procedure (*Procedures, Appendix II: University Disciplinary Procedures*) or other University policy. Generally, disciplinary action will be recommended when the harassing conduct is sufficiently severe, persistent, or pervasive that it alters the conditions of employment or limits the opportunity to participate in or benefit from educational programs. Any manager, supervisor, or designated employee responsible for reporting or responding to sexual harassment who knew about the harassment and took no action to stop it or failed to report the prohibited harassment also may be subject to disciplinary action. Conduct by an employee that is sexual harassment or retaliation in violation of this policy is considered to be outside the normal course and scope of employment.

G. Intentionally False Reports

Because sexual harassment frequently involves interactions between persons that are not witnessed by others, reports of sexual harassment cannot always be substantiated by additional evidence. Lack of corroborating evidence or “proof” should not discourage individuals from reporting sexual harassment under this policy. However, individuals who make reports that are later found to have been intentionally false or made maliciously without regard for truth, may be subject to disciplinary action under the applicable University disciplinary procedure (*Procedures, Appendix II: University Disciplinary Procedures*). This provision does not apply to reports made in good faith, even if the facts alleged in the report cannot be substantiated by an investigation.

H. Free Speech and Academic Freedom

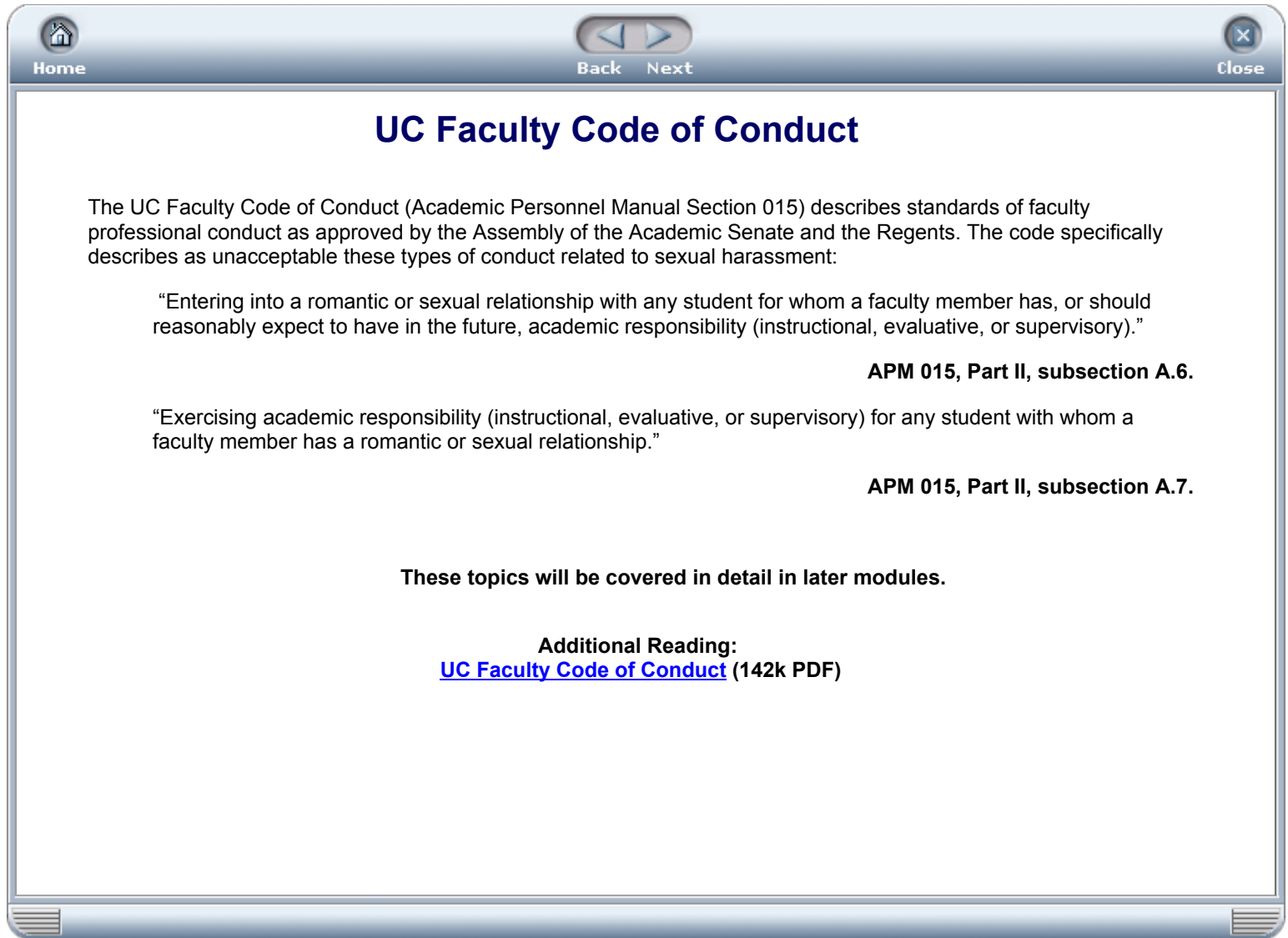
As participants in a public university, the faculty and other academic appointees, staff, and students of the University of California enjoy significant free speech protections guaranteed by the First Amendment of the United States Constitution and Article I, Section I of the California Constitution. This policy is intended to protect members of the University community from

discrimination, not to regulate protected speech. This policy shall be implemented in a manner that recognizes the importance of rights to freedom of speech and expression. The University also has a compelling interest in free inquiry and the collective search for knowledge and thus recognizes principles of academic freedom as a special area of protected speech. Consistent with these principles, no provision of this policy shall be interpreted to prohibit conduct that is legitimately related to the course content, teaching methods, scholarship, or public commentary of an individual faculty member or the educational, political, artistic, or literary expression of students in classrooms and public forums. However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal or state anti-discrimination laws.

I. Additional Enforcement Information

The federal Equal Employment Opportunity Commission (EEOC) and the California Department of Fair Employment and Housing (DFEH) also investigate complaints of unlawful harassment in employment. The U.S. Department of Education Office for Civil Rights (OCR) investigates complaints of unlawful harassment of students in educational programs or activities. These agencies may serve as neutral fact finders and attempt to facilitate the voluntary resolution of disputes with the parties. For more information, contact the nearest office of the EEOC, DFEH or OCR listed in the telephone directory.

This Policy has been updated with a technical change and supersedes the University of California Policy on Sexual Harassment dated December 14, 2004.



UC Faculty Code of Conduct

The UC Faculty Code of Conduct (Academic Personnel Manual Section 015) describes standards of faculty professional conduct as approved by the Assembly of the Academic Senate and the Regents. The code specifically describes as unacceptable these types of conduct related to sexual harassment:

“Entering into a romantic or sexual relationship with any student for whom a faculty member has, or should reasonably expect to have in the future, academic responsibility (instructional, evaluative, or supervisory).”

APM 015, Part II, subsection A.6.

“Exercising academic responsibility (instructional, evaluative, or supervisory) for any student with whom a faculty member has a romantic or sexual relationship.”

APM 015, Part II, subsection A.7.

These topics will be covered in detail in later modules.

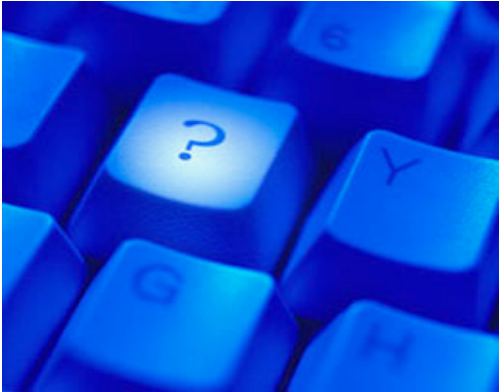
Additional Reading:
[UC Faculty Code of Conduct \(142k PDF\)](#)

Home

Back Next

Close

Check Your Understanding



Under UC policy, may a supervisor who is aware of sexual harassment but takes no action to stop the behavior be subject to disciplinary action?

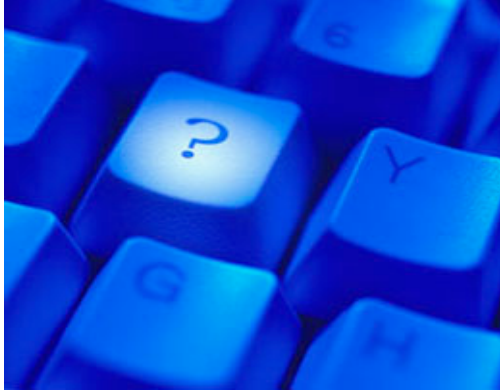
Yes

No

Submit

Home Back Next Close

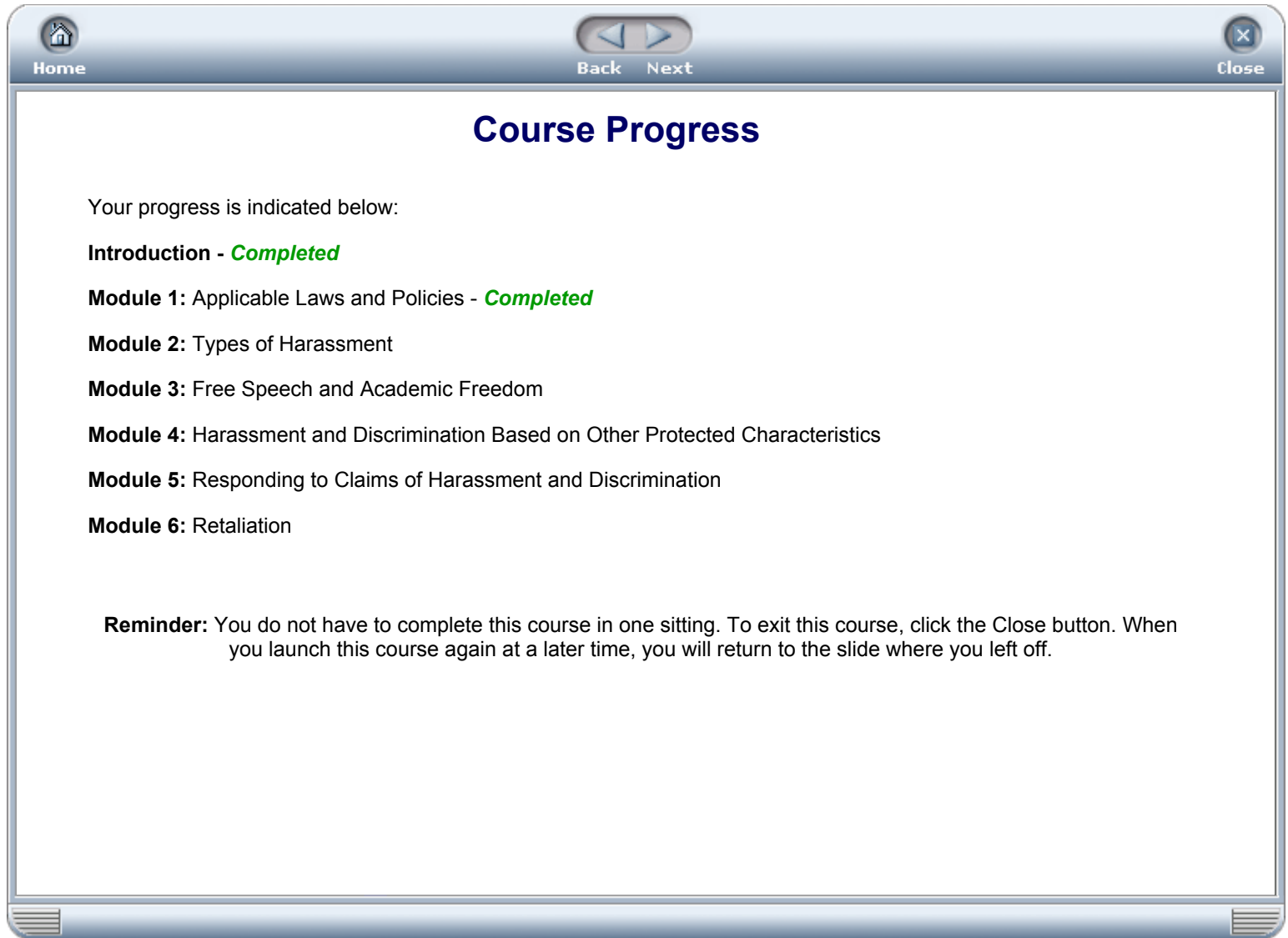
Check Your Understanding



Under UC policy, may a supervisor who is aware of sexual harassment but takes no action to stop the behavior be subject to disciplinary action?

Yes **That is CORRECT.**
Supervisors are responsible for reporting suspected violations of the policy to the Sexual Harassment Officer, and for taking prompt and effective action to end the harassment. Click the Next button to continue.

No



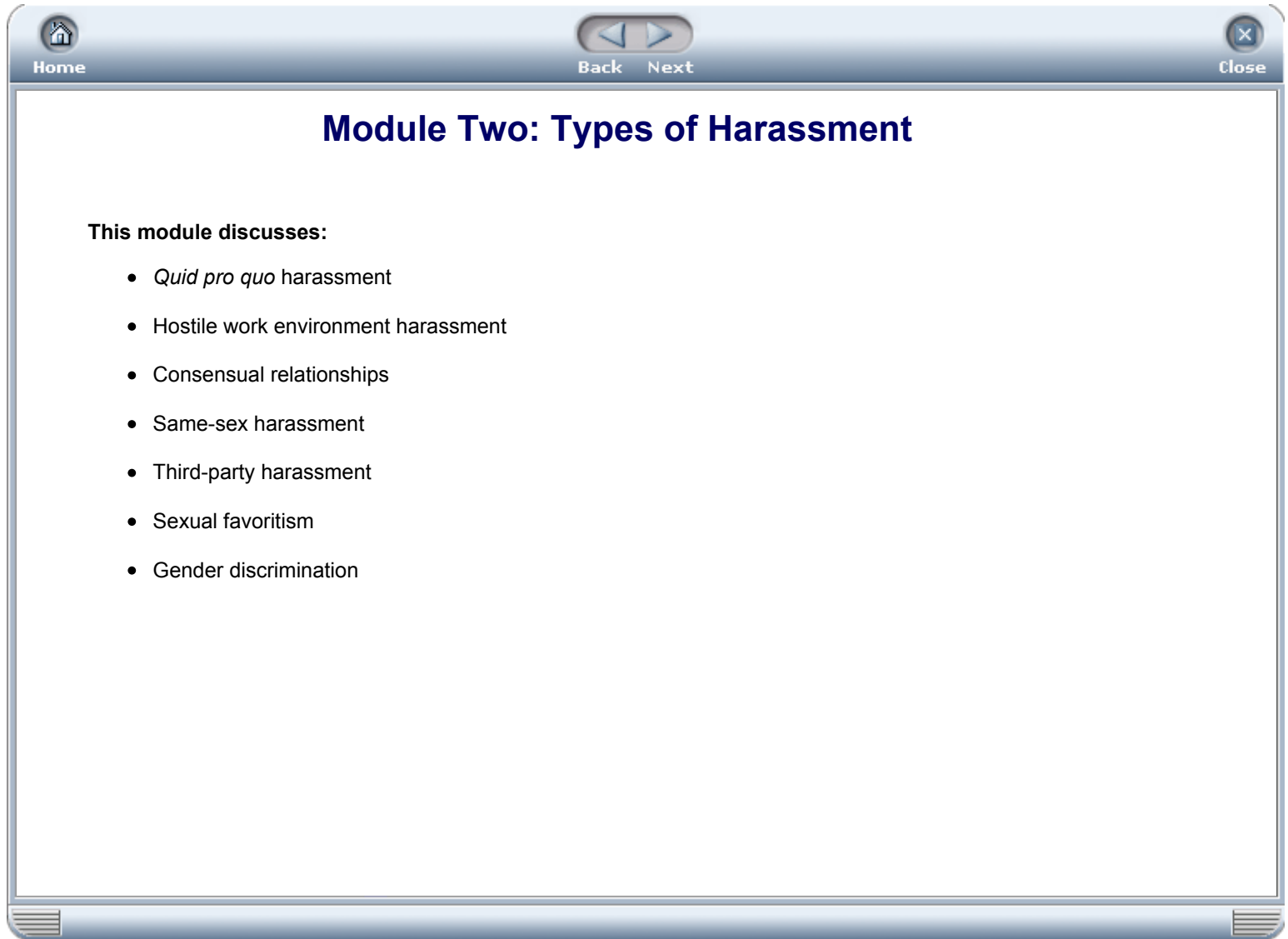
Home Back Next Close

Course Progress

Your progress is indicated below:

- Introduction - **Completed**
- Module 1: Applicable Laws and Policies - **Completed**
- Module 2: Types of Harassment
- Module 3: Free Speech and Academic Freedom
- Module 4: Harassment and Discrimination Based on Other Protected Characteristics
- Module 5: Responding to Claims of Harassment and Discrimination
- Module 6: Retaliation

Reminder: You do not have to complete this course in one sitting. To exit this course, click the Close button. When you launch this course again at a later time, you will return to the slide where you left off.

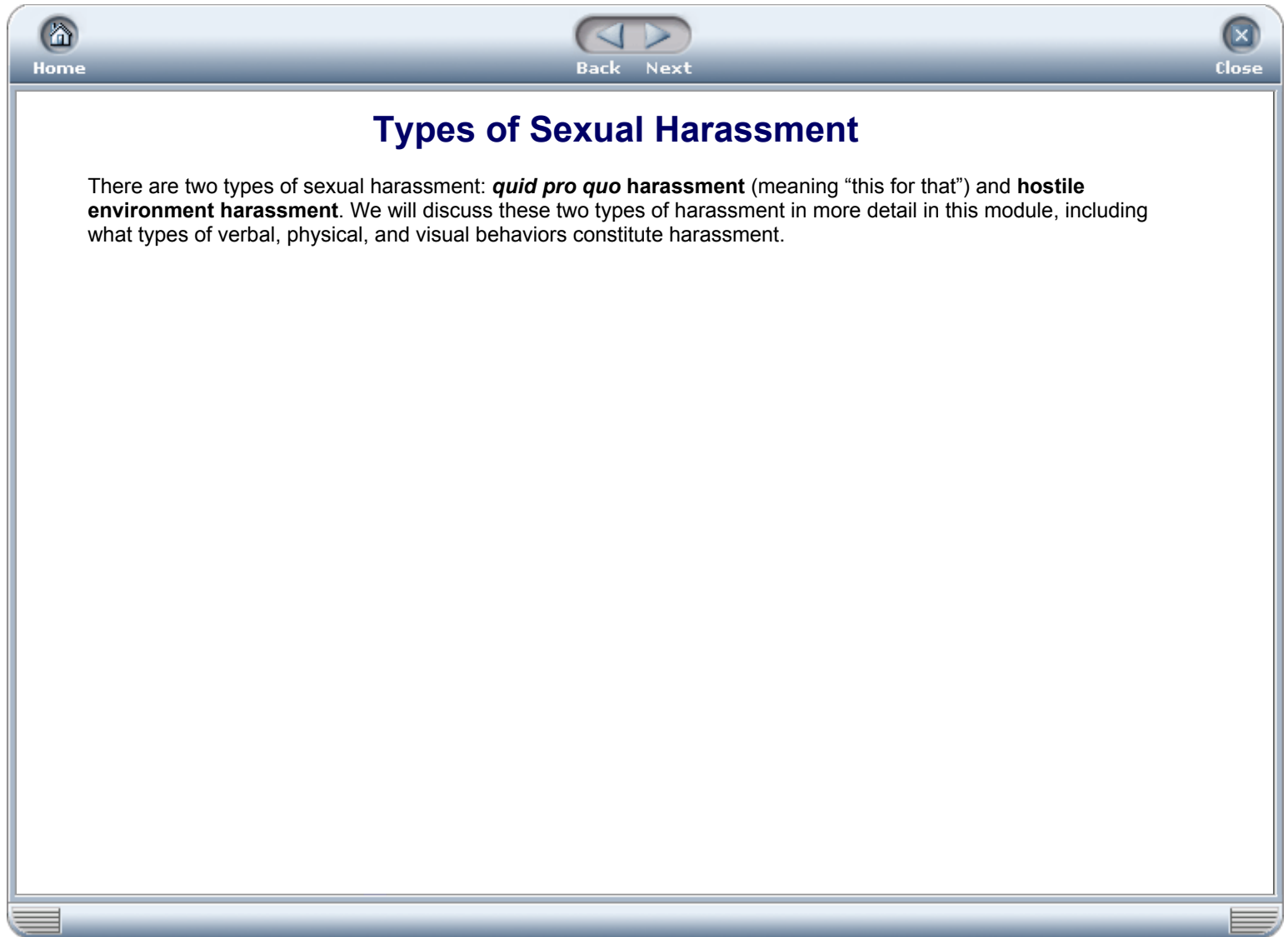


The slide is presented in a window with a blue header bar. On the left of the header is a 'Home' button with a house icon. In the center are 'Back' and 'Next' navigation buttons with left and right arrow icons. On the right is a 'Close' button with an 'X' icon. The main content area has a white background with a blue title and a bulleted list of topics.

Module Two: Types of Harassment

This module discusses:

- *Quid pro quo* harassment
- Hostile work environment harassment
- Consensual relationships
- Same-sex harassment
- Third-party harassment
- Sexual favoritism
- Gender discrimination



Home Back Next Close

Types of Sexual Harassment

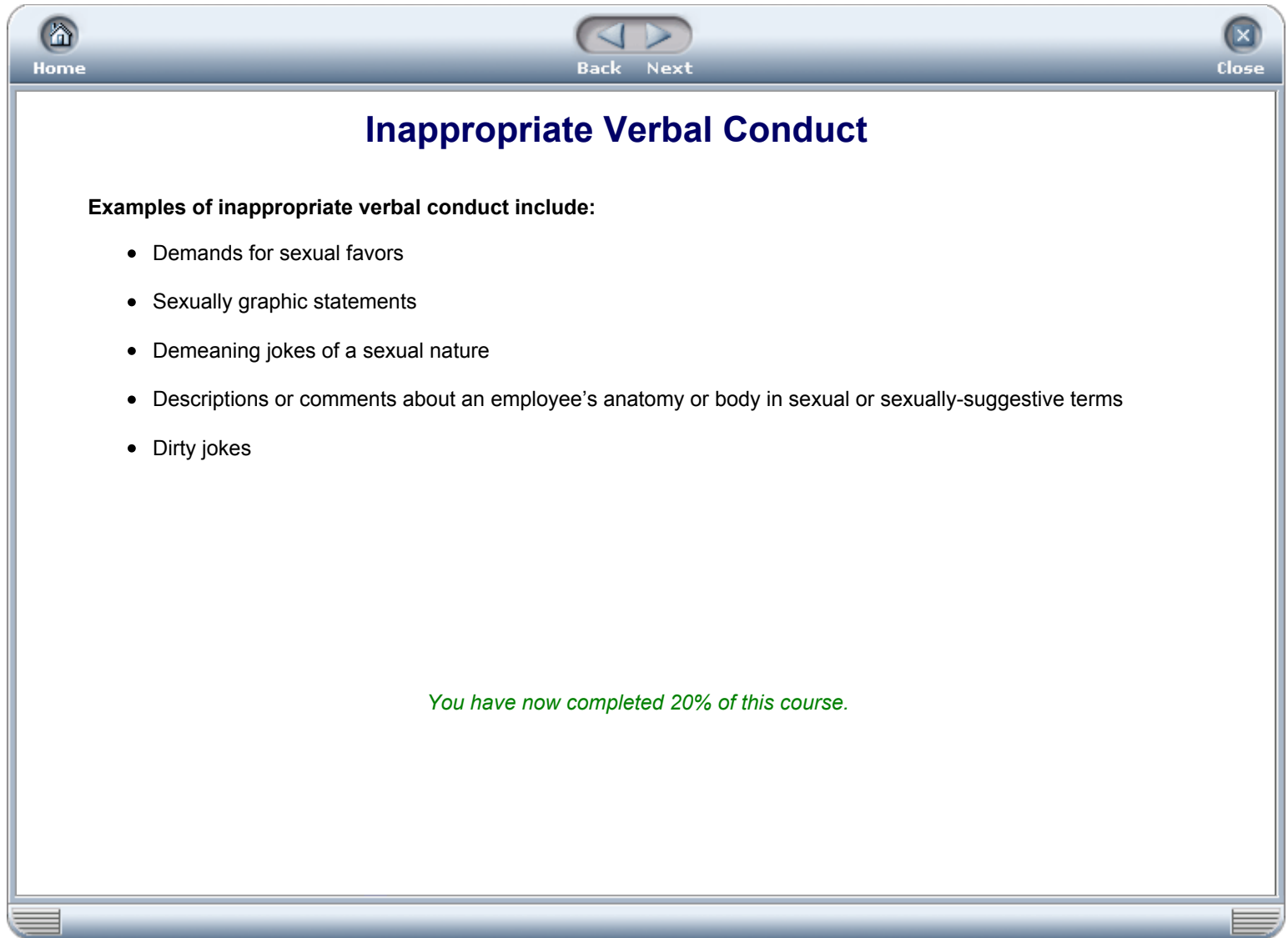
There are two types of sexual harassment: **quid pro quo harassment** (meaning “this for that”) and **hostile environment harassment**. We will discuss these two types of harassment in more detail in this module, including what types of verbal, physical, and visual behaviors constitute harassment.



The slide is presented in a window with a blue header bar. On the left of the header is a 'Home' button with a house icon. In the center are 'Back' and 'Next' navigation buttons with left and right arrow icons. On the right is a 'Close' button with an 'X' icon. The main content area has a white background with a blue title and black text.

Quid Pro Quo Harassment

Quid pro quo harassment occurs when **submission to or rejection of unwelcome sexual conduct** (verbal, physical or visual) **explicitly or implicitly affects a person's employment**. For example, if a supervisor terminates a subordinate for rejecting his or her sexual advances, the supervisor has engaged in *quid pro quo* harassment.



Home

Back

Next

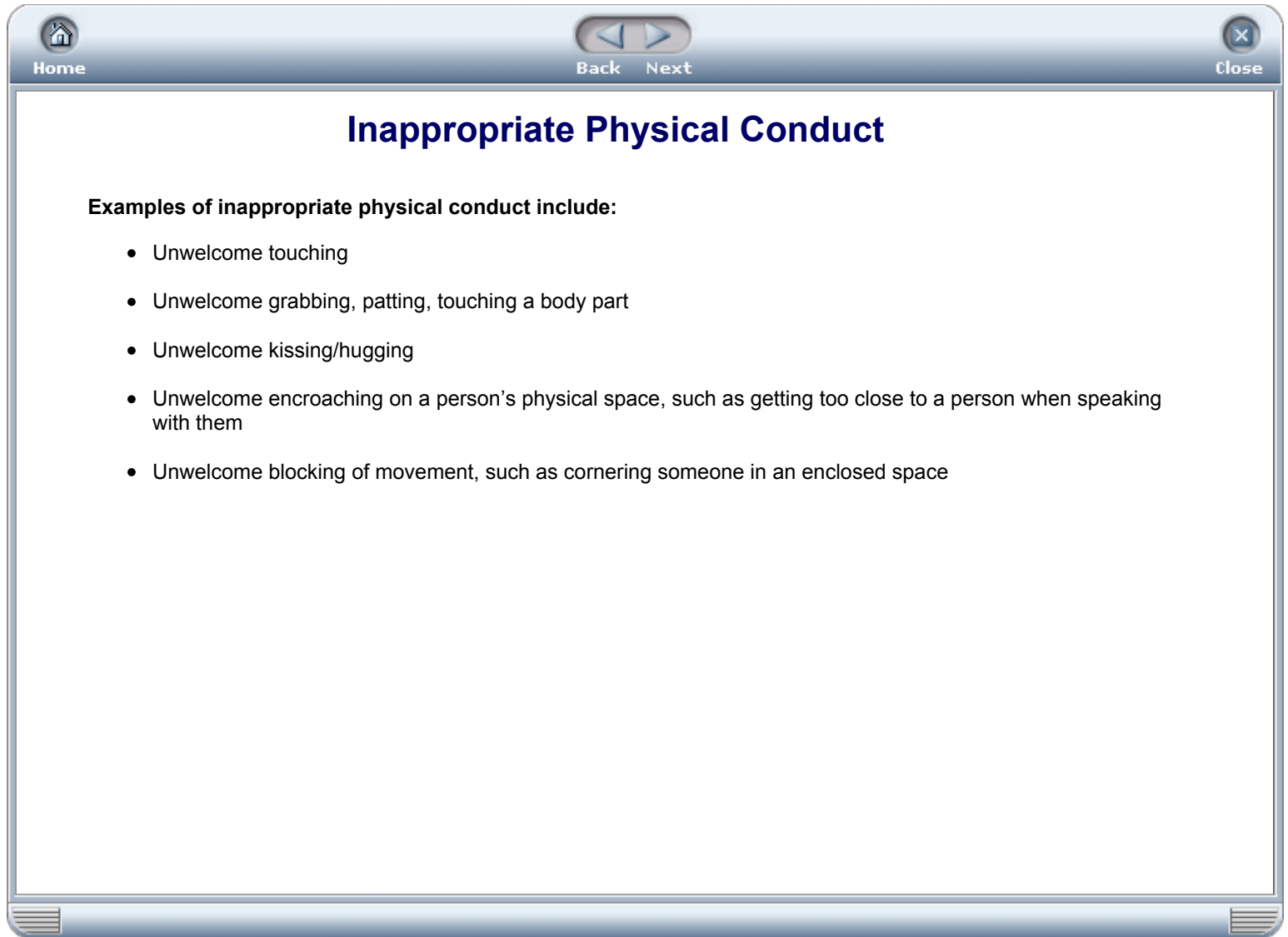
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Inappropriate Verbal Conduct

Examples of inappropriate verbal conduct include:

- Demands for sexual favors
- Sexually graphic statements
- Demeaning jokes of a sexual nature
- Descriptions or comments about an employee's anatomy or body in sexual or sexually-suggestive terms
- Dirty jokes

You have now completed 20% of this course.



Home

Back

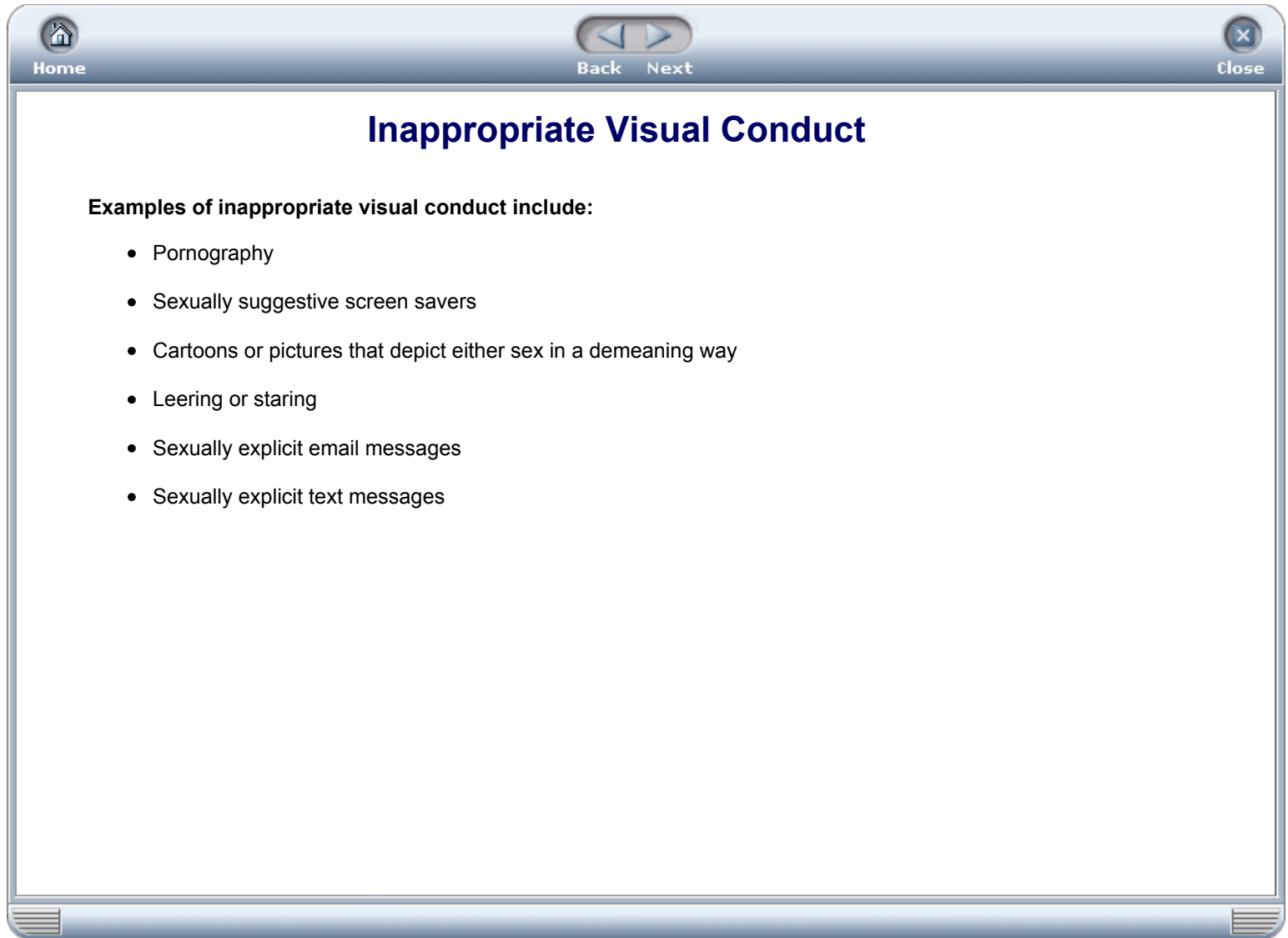
Next

Close

Inappropriate Physical Conduct

Examples of inappropriate physical conduct include:

- Unwelcome touching
- Unwelcome grabbing, patting, touching a body part
- Unwelcome kissing/hugging
- Unwelcome encroaching on a person's physical space, such as getting too close to a person when speaking with them
- Unwelcome blocking of movement, such as cornering someone in an enclosed space



The slide is presented in a window with a blue header bar. On the left of the header is a 'Home' button with a house icon. In the center are 'Back' and 'Next' navigation buttons with left and right arrow icons. On the right is a 'Close' button with an 'X' icon. The main content area has a white background with a blue title and a bulleted list of examples.

Inappropriate Visual Conduct

Examples of inappropriate visual conduct include:

- Pornography
- Sexually suggestive screen savers
- Cartoons or pictures that depict either sex in a demeaning way
- Leering or staring
- Sexually explicit email messages
- Sexually explicit text messages

Home Back Next Close

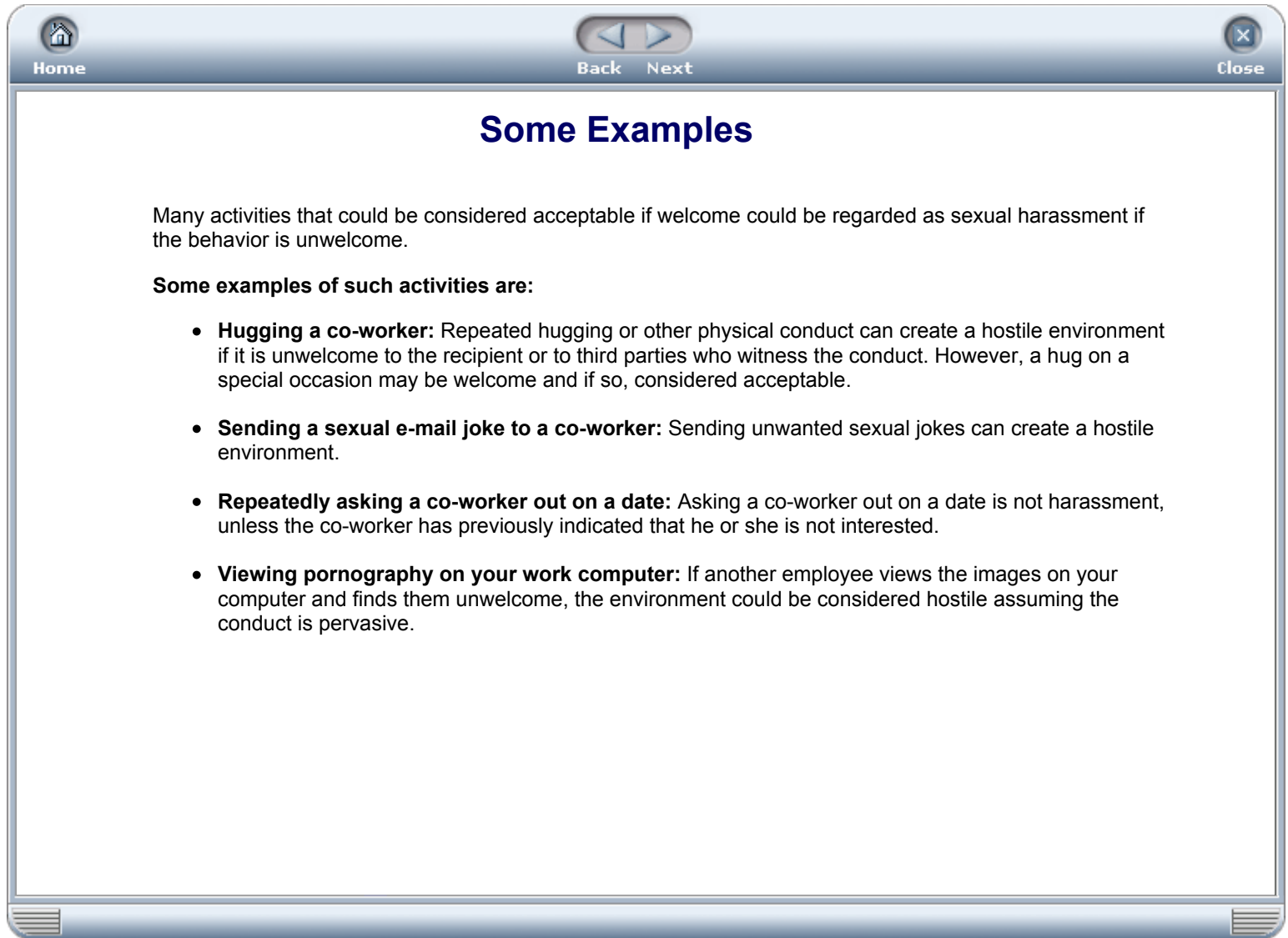
Determining Whether Conduct is Welcome



Of course, some conduct might be perfectly welcome in some circumstances, such as hugging a co-worker at a baby shower or birthday party.

You'll want to watch for the reactions of the recipient, such as facial expressions or physical reactions, to determine if your behavior is welcome. Since it is not always easy to determine how others will react, it is important in the workplace not to assume that your conduct will be welcome.

Employees should be encouraged (but not forced) to inform others when their behavior is unwelcome. In other words, supervisors should empower employees to speak up and let others know their comfort level.



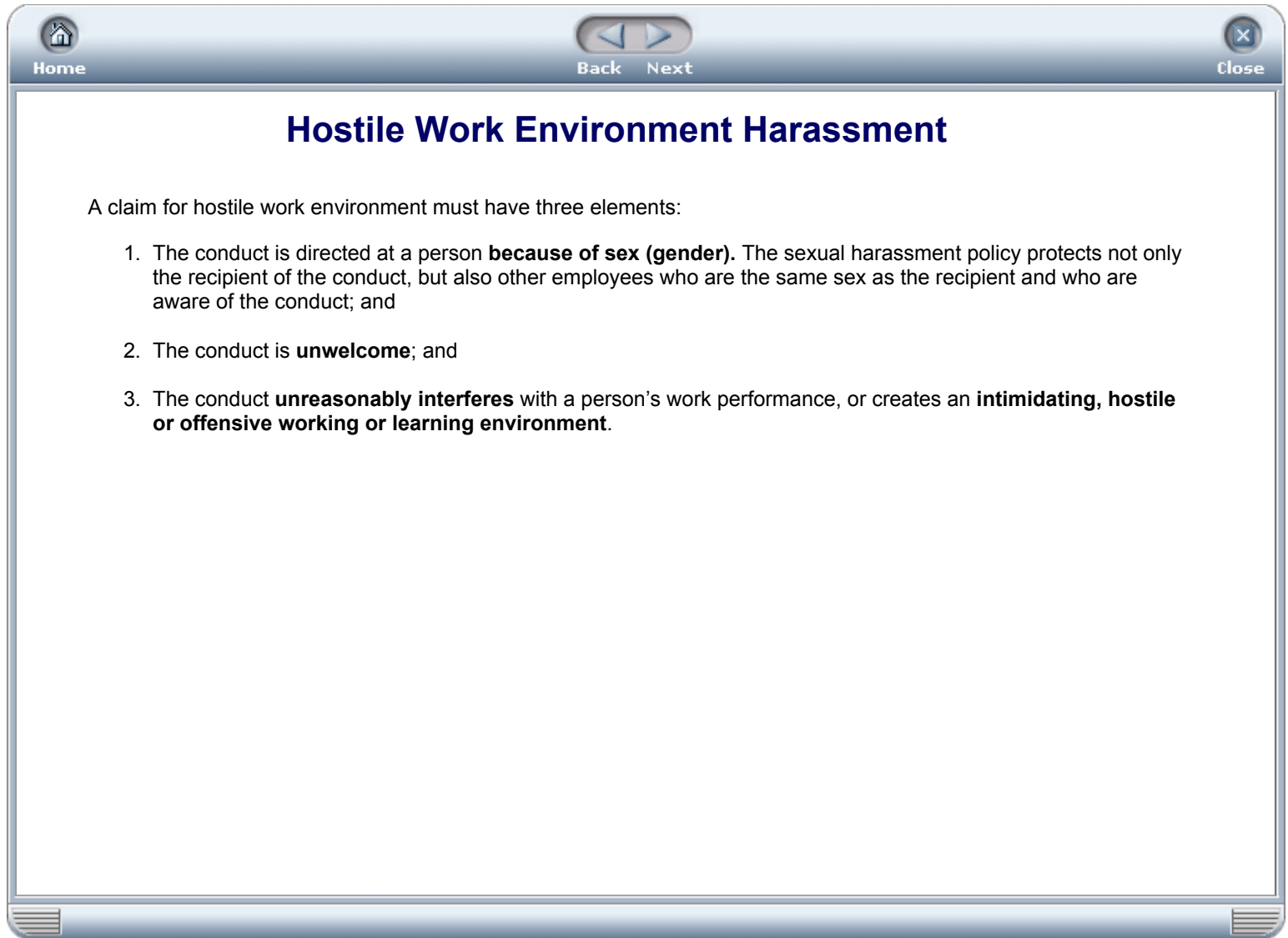
Home Back Next Close

Some Examples

Many activities that could be considered acceptable if welcome could be regarded as sexual harassment if the behavior is unwelcome.

Some examples of such activities are:

- **Hugging a co-worker:** Repeated hugging or other physical conduct can create a hostile environment if it is unwelcome to the recipient or to third parties who witness the conduct. However, a hug on a special occasion may be welcome and if so, considered acceptable.
- **Sending a sexual e-mail joke to a co-worker:** Sending unwanted sexual jokes can create a hostile environment.
- **Repeatedly asking a co-worker out on a date:** Asking a co-worker out on a date is not harassment, unless the co-worker has previously indicated that he or she is not interested.
- **Viewing pornography on your work computer:** If another employee views the images on your computer and finds them unwelcome, the environment could be considered hostile assuming the conduct is pervasive.

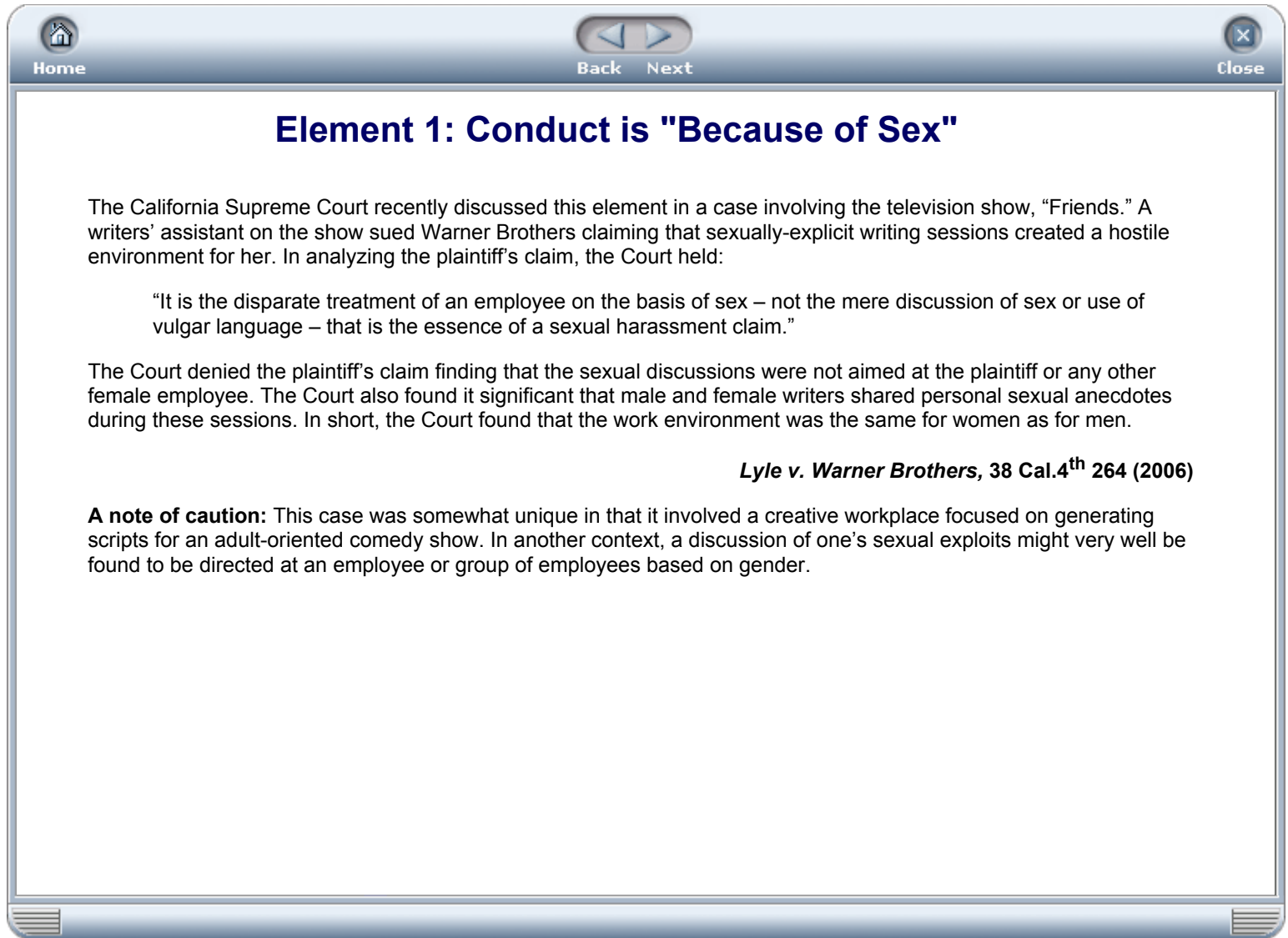


Home Back Next Close

Hostile Work Environment Harassment

A claim for hostile work environment must have three elements:

1. The conduct is directed at a person **because of sex (gender)**. The sexual harassment policy protects not only the recipient of the conduct, but also other employees who are the same sex as the recipient and who are aware of the conduct; and
2. The conduct is **unwelcome**; and
3. The conduct **unreasonably interferes** with a person's work performance, or creates an **intimidating, hostile or offensive working or learning environment**.



Element 1: Conduct is "Because of Sex"

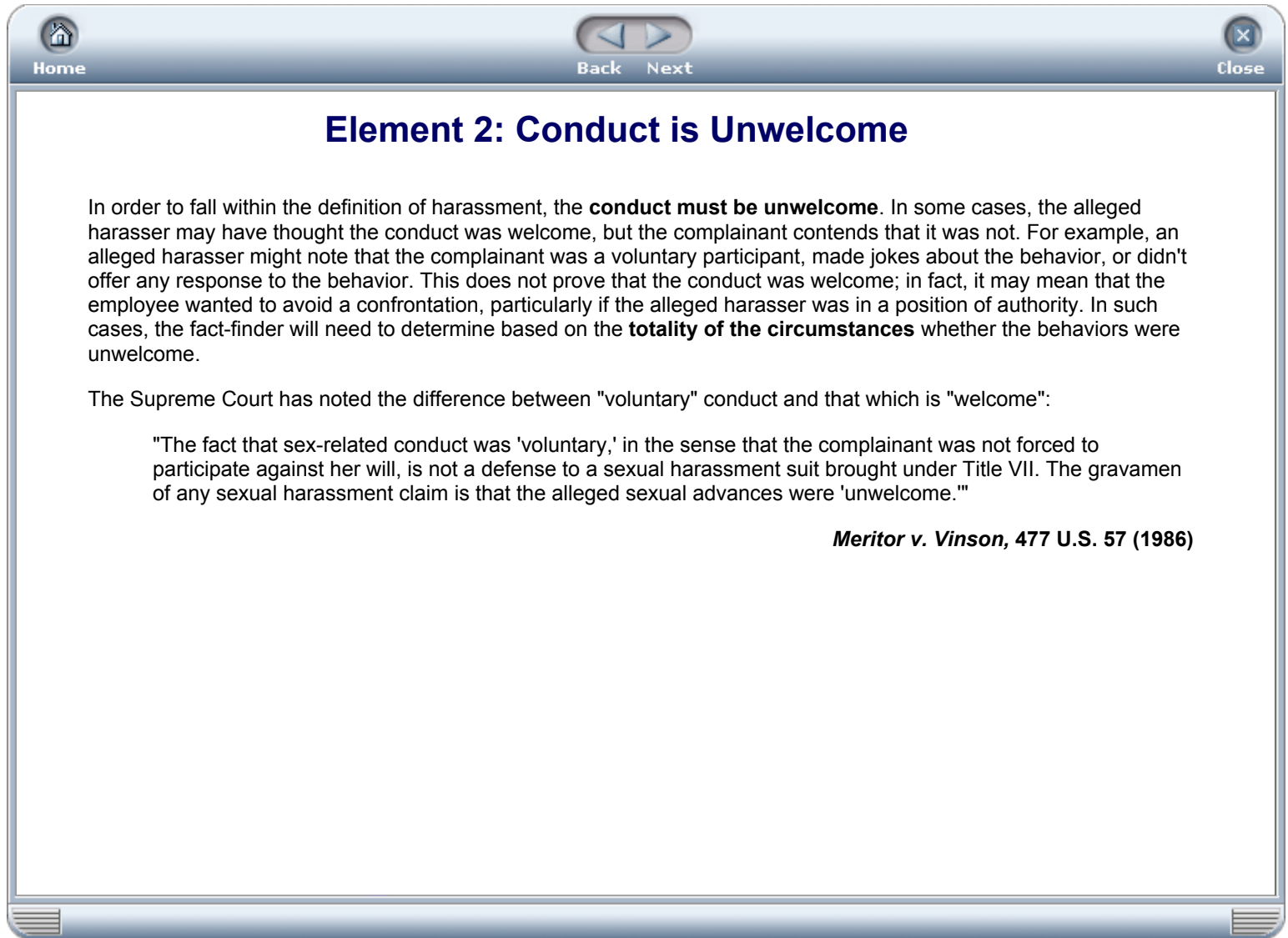
The California Supreme Court recently discussed this element in a case involving the television show, "Friends." A writers' assistant on the show sued Warner Brothers claiming that sexually-explicit writing sessions created a hostile environment for her. In analyzing the plaintiff's claim, the Court held:

"It is the disparate treatment of an employee on the basis of sex – not the mere discussion of sex or use of vulgar language – that is the essence of a sexual harassment claim."

The Court denied the plaintiff's claim finding that the sexual discussions were not aimed at the plaintiff or any other female employee. The Court also found it significant that male and female writers shared personal sexual anecdotes during these sessions. In short, the Court found that the work environment was the same for women as for men.

Lyle v. Warner Brothers, 38 Cal.4th 264 (2006)

A note of caution: This case was somewhat unique in that it involved a creative workplace focused on generating scripts for an adult-oriented comedy show. In another context, a discussion of one's sexual exploits might very well be found to be directed at an employee or group of employees based on gender.



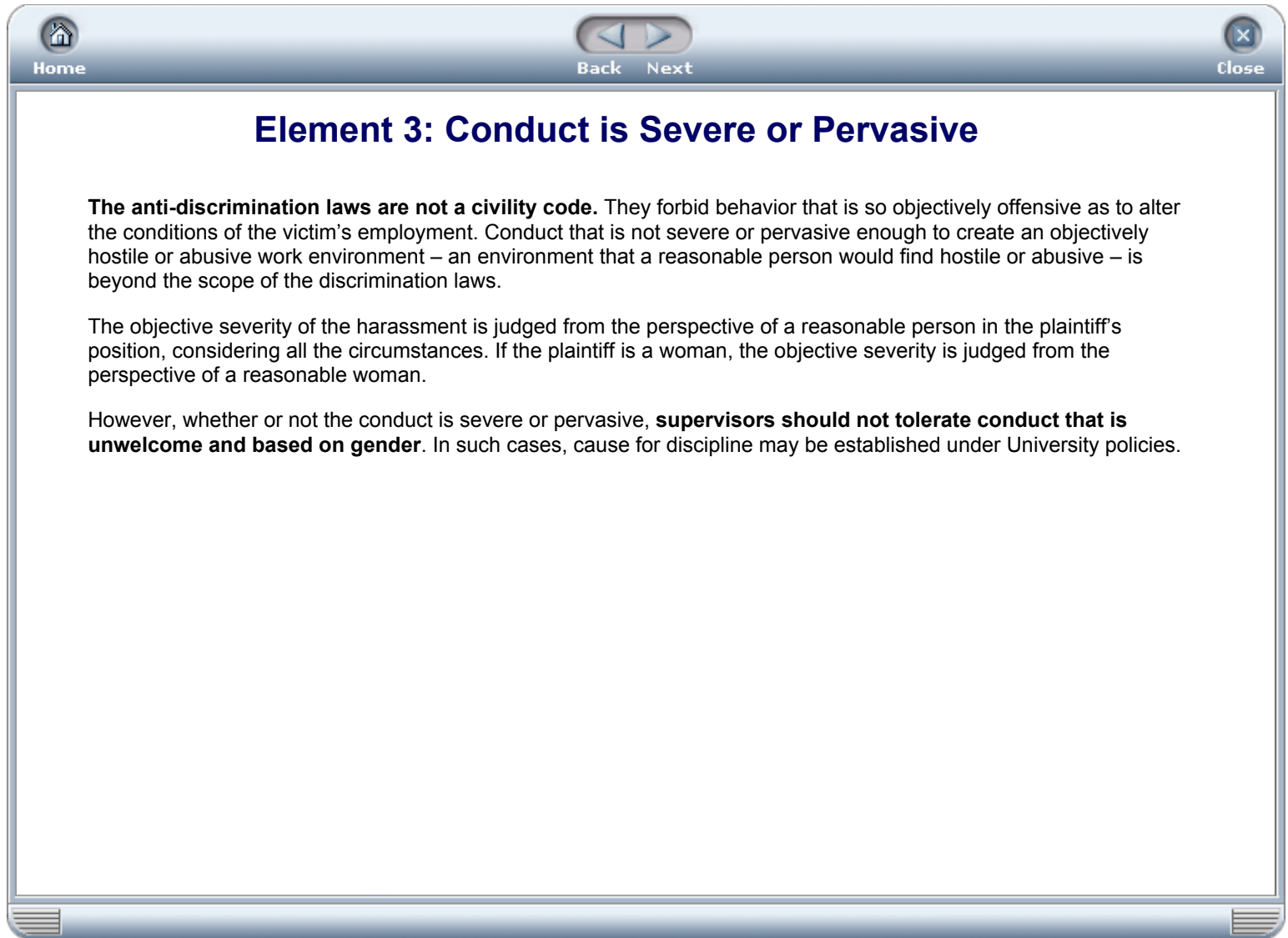
Element 2: Conduct is Unwelcome

In order to fall within the definition of harassment, the **conduct must be unwelcome**. In some cases, the alleged harasser may have thought the conduct was welcome, but the complainant contends that it was not. For example, an alleged harasser might note that the complainant was a voluntary participant, made jokes about the behavior, or didn't offer any response to the behavior. This does not prove that the conduct was welcome; in fact, it may mean that the employee wanted to avoid a confrontation, particularly if the alleged harasser was in a position of authority. In such cases, the fact-finder will need to determine based on the **totality of the circumstances** whether the behaviors were unwelcome.

The Supreme Court has noted the difference between "voluntary" conduct and that which is "welcome":

"The fact that sex-related conduct was 'voluntary,' in the sense that the complainant was not forced to participate against her will, is not a defense to a sexual harassment suit brought under Title VII. The gravamen of any sexual harassment claim is that the alleged sexual advances were 'unwelcome.'"

Meritor v. Vinson, 477 U.S. 57 (1986)

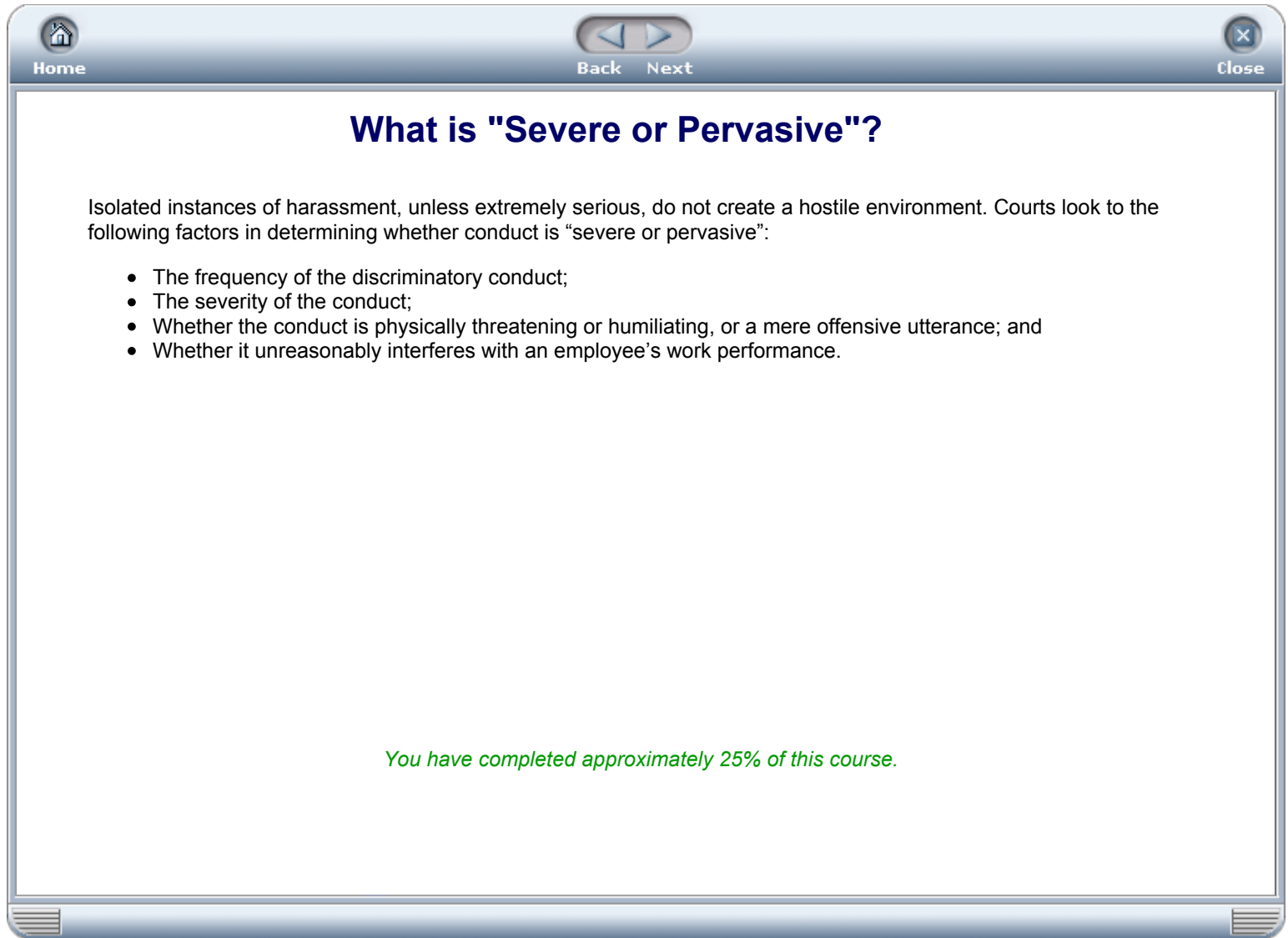


Element 3: Conduct is Severe or Pervasive

The anti-discrimination laws are not a civility code. They forbid behavior that is so objectively offensive as to alter the conditions of the victim's employment. Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment – an environment that a reasonable person would find hostile or abusive – is beyond the scope of the discrimination laws.

The objective severity of the harassment is judged from the perspective of a reasonable person in the plaintiff's position, considering all the circumstances. If the plaintiff is a woman, the objective severity is judged from the perspective of a reasonable woman.

However, whether or not the conduct is severe or pervasive, **supervisors should not tolerate conduct that is unwelcome and based on gender.** In such cases, cause for discipline may be established under University policies.



What is "Severe or Pervasive"?

Isolated instances of harassment, unless extremely serious, do not create a hostile environment. Courts look to the following factors in determining whether conduct is "severe or pervasive":


- The frequency of the discriminatory conduct;
- The severity of the conduct;
- Whether the conduct is physically threatening or humiliating, or a mere offensive utterance; and
- Whether it unreasonably interferes with an employee's work performance.

You have completed approximately 25% of this course.

HomeBack NextClose

Case Study: Evelyn Efficient

Evelyn Efficient is a professor in the Department of Statistics. Over a five-week period, one of the other professors in her department, Andy Mode, engaged in the following behaviors: on one occasion, Professor Mode asked Professor Efficient if she was married. When she said no, he responded, "So, you're the aging nun?" On another occasion, Professor Mode greeted her by taking her arm and pulling her close to him so the sides of their bodies were touching. On a third occasion, Professor Mode put his arm around Professor Efficient and, as he did so, rubbed her breast with his arm.



Is Professor Mode's conduct "severe or pervasive" under the law?


Yes

No

Home Back Next Close

Case Study: Evelyn Efficient

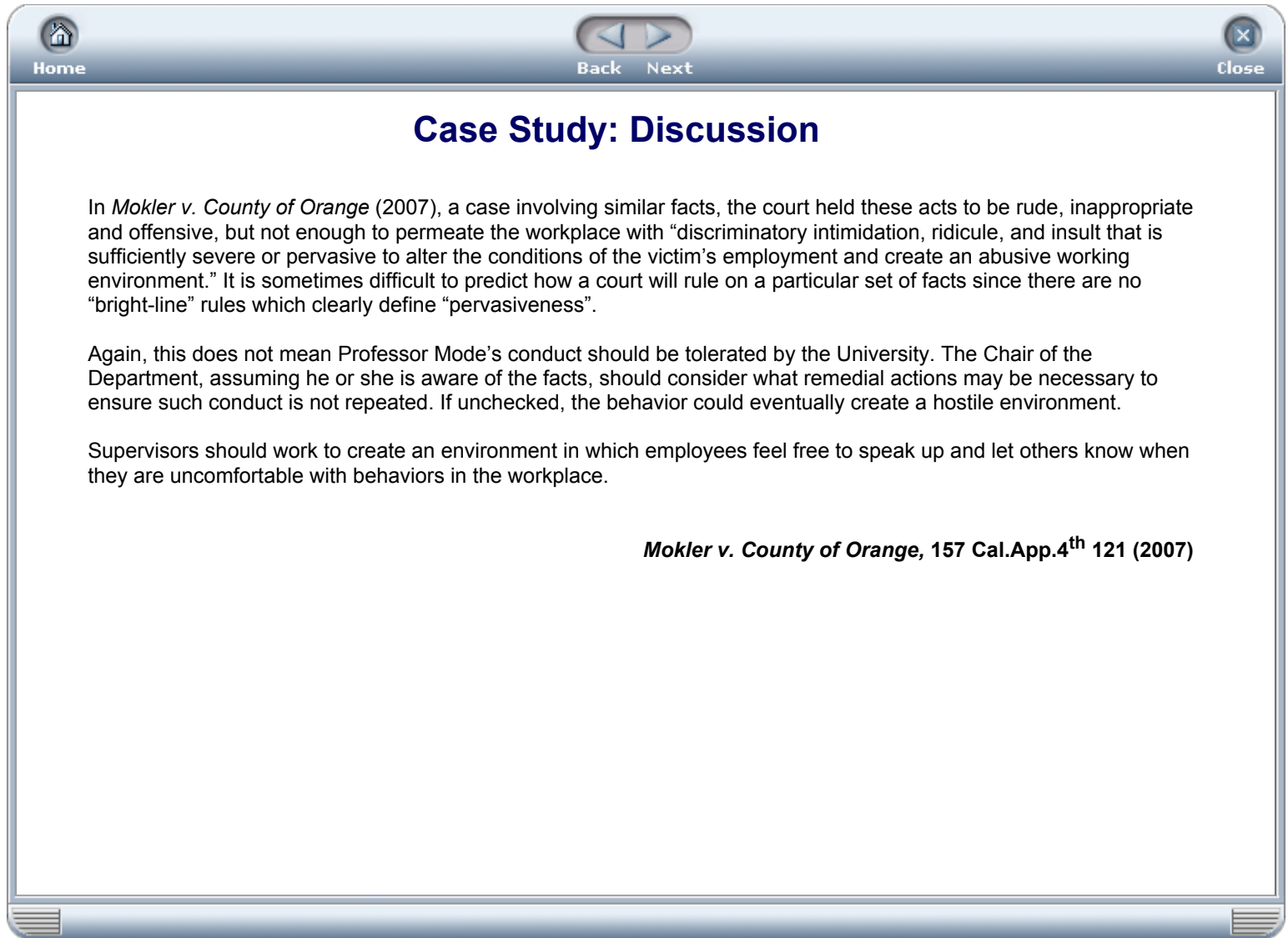
Evelyn Efficient is a professor in the Department of Statistics. Over a five-week period, one of the other professors in her department, Andy Mode, engaged in the following behaviors: on one occasion, Professor Mode asked Professor Efficient if she was married. When she said no, he responded, "So, you're the aging nun?" On another occasion, Professor Mode greeted her by taking her arm and pulling her close to him so the sides of their bodies were touching. On a third occasion, Professor Mode put his arm around Professor Efficient and, as he did so, rubbed her breast with his arm.



Is Professor Mode's conduct "severe or pervasive" under the law?

Yes **That is CORRECT.**

No **Click the Next button to read a discussion of this case study.**



Case Study: Discussion

In *Mokler v. County of Orange* (2007), a case involving similar facts, the court held these acts to be rude, inappropriate and offensive, but not enough to permeate the workplace with “discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment.” It is sometimes difficult to predict how a court will rule on a particular set of facts since there are no “bright-line” rules which clearly define “pervasiveness”.

Again, this does not mean Professor Mode’s conduct should be tolerated by the University. The Chair of the Department, assuming he or she is aware of the facts, should consider what remedial actions may be necessary to ensure such conduct is not repeated. If unchecked, the behavior could eventually create a hostile environment.


Supervisors should work to create an environment in which employees feel free to speak up and let others know when they are uncomfortable with behaviors in the workplace.

Mokler v. County of Orange, 157 Cal.App.4th 121 (2007)

HomeBack NextClose

Case Study: Mr. Donaghy

Jack Donaghy is the Assistant Director of the campus Human Resources Department. He reports to its Director, Liz Luck. Over the course of the three years they have worked together, Ms. Luck has made sporadic comments about campus clients having the “hots” for Mr. Donaghy. Ms. Luck, at a conference in front of others, asked Mr. Donaghy how he looked so sexy first thing in the morning. She talked to him on another occasion about her husband’s battle with cancer, and told him that “next time” she would go for someone younger, like him. On one occasion, Ms. Luck told Mr. Donaghy that she was not ready to start a new relationship, but instead just wanted to have sex with someone. She asked him if he had any friends that just wanted to have sex and whether he knew anyone who was good in bed.



Does Ms. Luck’s behavior potentially violate the UC Policy on Sexual Harassment?

Yes


No

Submit

Home Back Next Close

Case Study: Mr. Donaghy

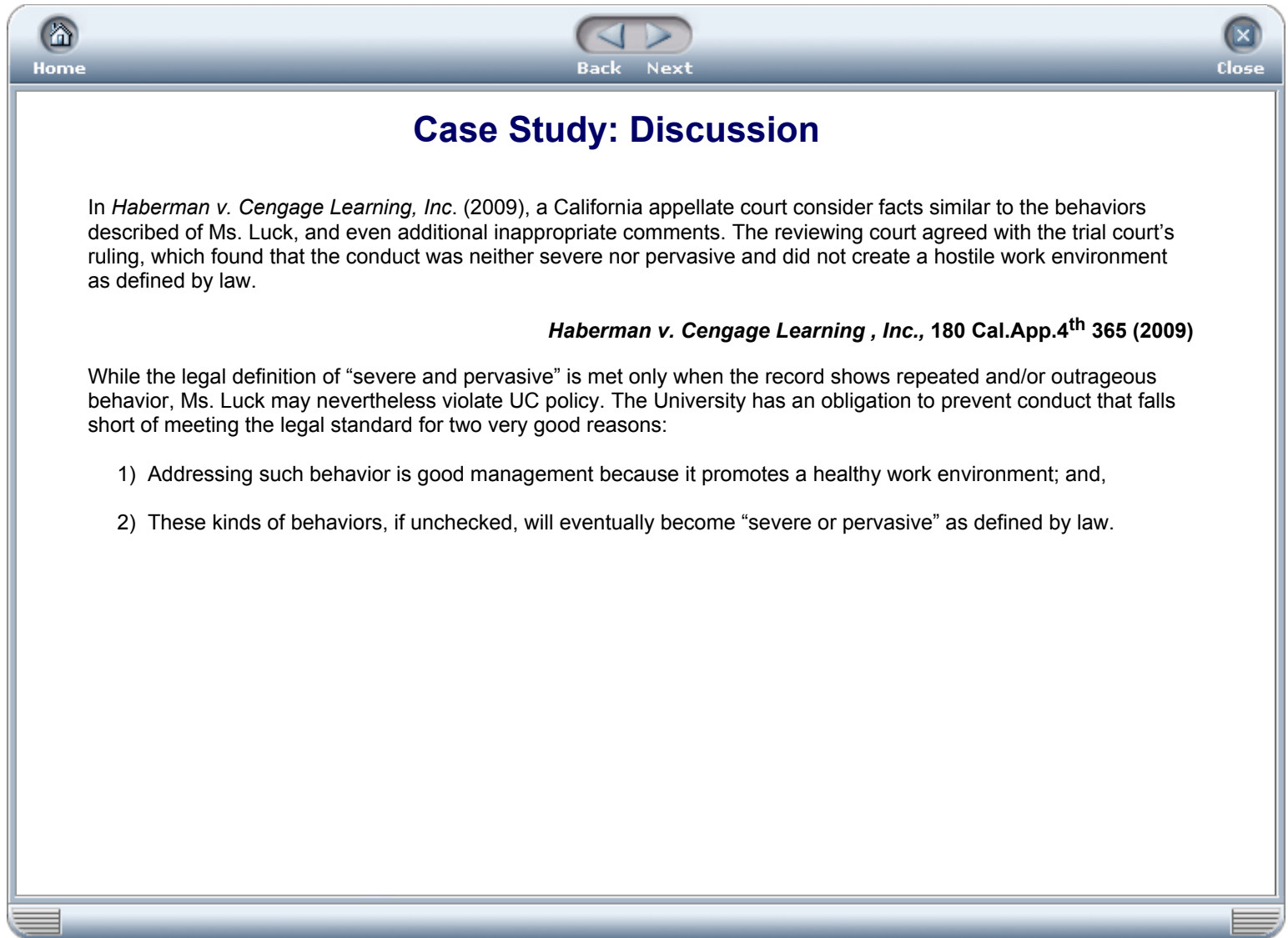
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Does Ms. Luck’s behavior potentially violate the UC Policy on Sexual Harassment?

Yes **That is CORRECT.**

No **Click the Next button to read a discussion of this case study.**



Home

Back Next

Close

Case Study: Discussion

In *Haberman v. Cengage Learning, Inc.* (2009), a California appellate court consider facts similar to the behaviors described of Ms. Luck, and even additional inappropriate comments. The reviewing court agreed with the trial court's ruling, which found that the conduct was neither severe nor pervasive and did not create a hostile work environment as defined by law.

Haberman v. Cengage Learning , Inc., 180 Cal.App.4th 365 (2009)

While the legal definition of "severe and pervasive" is met only when the record shows repeated and/or outrageous behavior, Ms. Luck may nevertheless violate UC policy. The University has an obligation to prevent conduct that falls short of meeting the legal standard for two very good reasons:


- 1) Addressing such behavior is good management because it promotes a healthy work environment; and,
- 2) These kinds of behaviors, if unchecked, will eventually become "severe or pervasive" as defined by law.

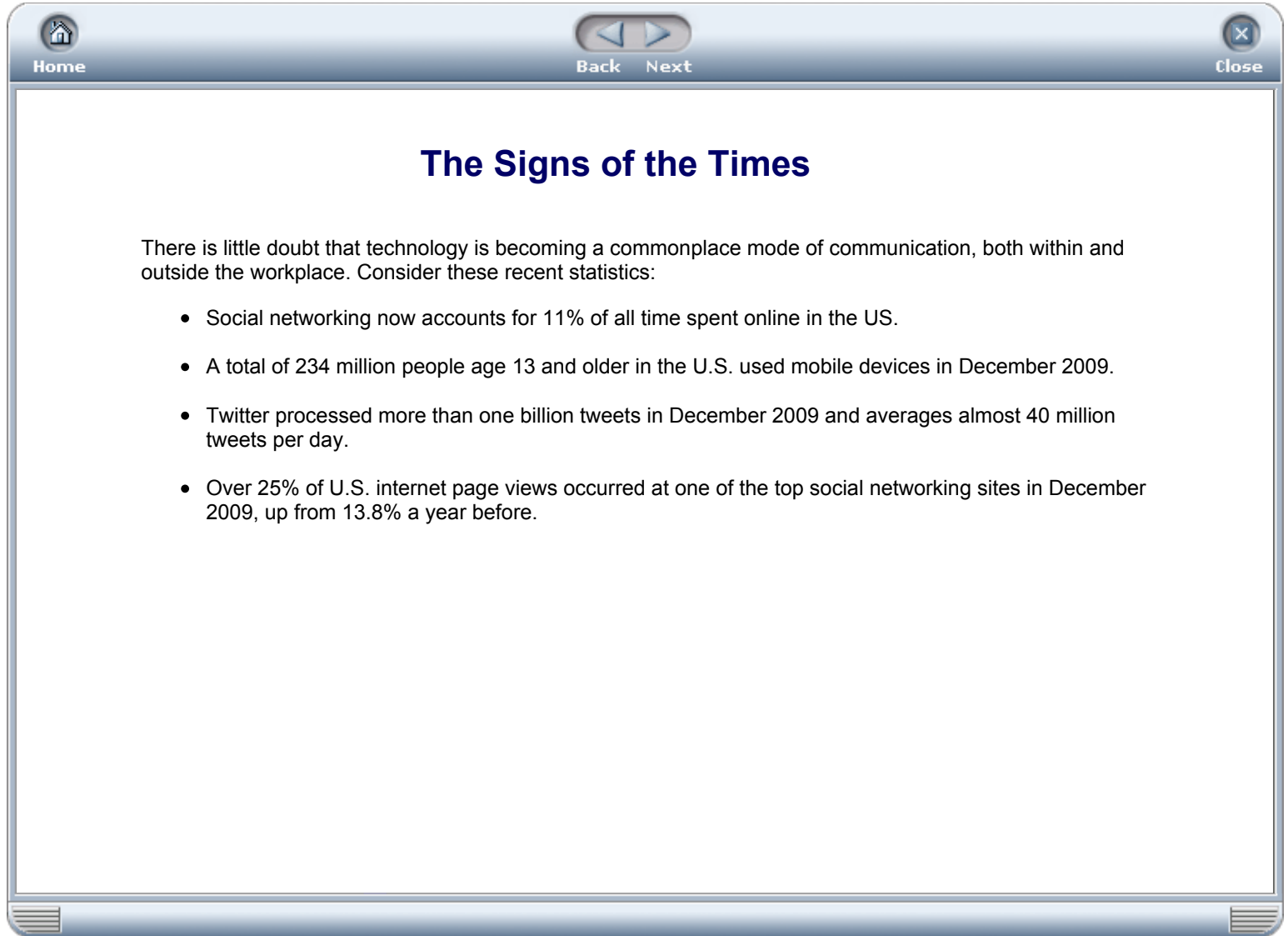
Home Back Next Close

Technology Changes Anti-Harassment Rules are the Same

Harassment can come by way of all forms of communication, including:

- Emails
- Text messages
- Instant Messaging, such as:
 - AOL
 - Windows Live
 - Yahoo Instant Messengers
- Social Networking, such as:
 - Twitter
 - Facebook
 - LinkedIn
 - Myspace
- Blogs, such as:
 - Blogger
 - LiveJournal





Home

Back

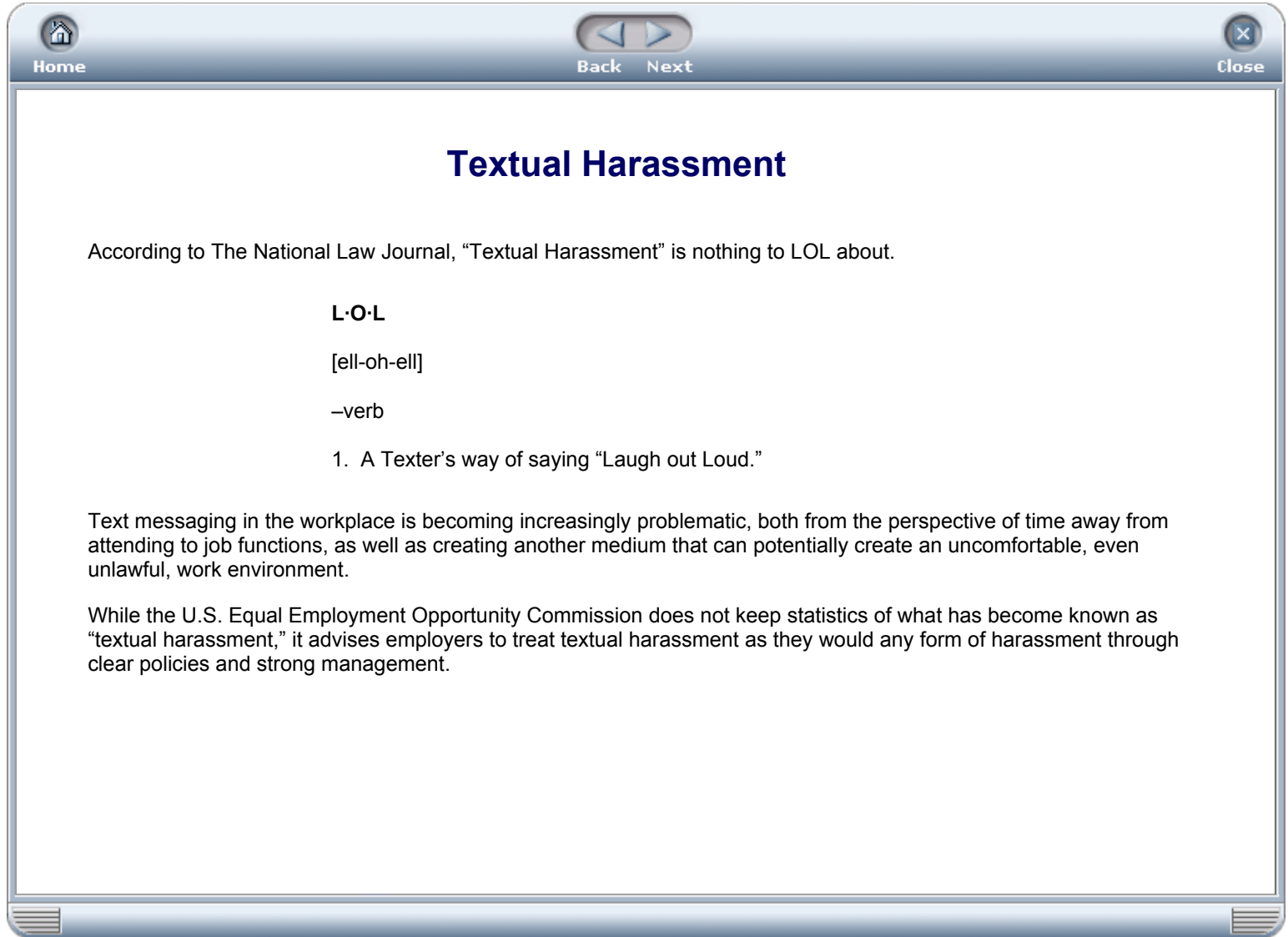
Next

Close

The Signs of the Times

There is little doubt that technology is becoming a commonplace mode of communication, both within and outside the workplace. Consider these recent statistics:

- Social networking now accounts for 11% of all time spent online in the US.
- A total of 234 million people age 13 and older in the U.S. used mobile devices in December 2009.
- Twitter processed more than one billion tweets in December 2009 and averages almost 40 million tweets per day.
- Over 25% of U.S. internet page views occurred at one of the top social networking sites in December 2009, up from 13.8% a year before.



Home

Back Next

Close

Textual Harassment

According to The National Law Journal, “Textual Harassment” is nothing to LOL about.

L·O·L

[ell-oh-ell]

–verb

1. A Texter’s way of saying “Laugh out Loud.”


Text messaging in the workplace is becoming increasingly problematic, both from the perspective of time away from attending to job functions, as well as creating another medium that can potentially create an uncomfortable, even unlawful, work environment.

While the U.S. Equal Employment Opportunity Commission does not keep statistics of what has become known as “textual harassment,” it advises employers to treat textual harassment as they would any form of harassment through clear policies and strong management.

HomeBack NextClose

Case Study: Tim Texter

Tim Texter, who graduated from the University of California, was lucky enough to land his first job after graduation at a UC campus. He works in a lab and, among other duties, logs research results. Given the nature of the research, lab employees work different and somewhat unpredictable shifts. Mr. Texter loves his job because he works with Peggy Post Doc, a young, smart and attractive researcher who is friendly and nice. Mr. Texter sends Ms. Post Doc frequent text messages when they are not in the lab together. The text messages initially related to lab issues, but since their friendship has developed, and Ms. Post Doc always responds to his messages, he has begun sending texts of a personal nature, such as "Where R U?" "What RU doing tonight?" "What RU wearing?" and "IMEZRU (I am easy, are you?)." Ms. Post Doc complains to you, her supervisor, that the volume and the content of the messages she is receiving from Mr. Texter are problematic, and that she feels harassed by Mr. Texter.




Which of the following options would you recommend? (You may select more than one option.)

- You should call the Sexual Harassment Officer to discuss the matter.
- Speak with Mr. Texter and let him know that the messages are making Ms. Post Doc uncomfortable and that he should stop sending them.
- Establish texting rules for your lab personnel that sets expectations regarding the content and volume of text messages that are appropriate among and between staff, both during and outside of work hours.
- Do nothing. After all, the text messages are sent during non-work hours and outside of the lab. Ms. Post Doc just needs to get an iPhone and lighten up. After all, this is how her generation communicates.

HomeBack NextClose

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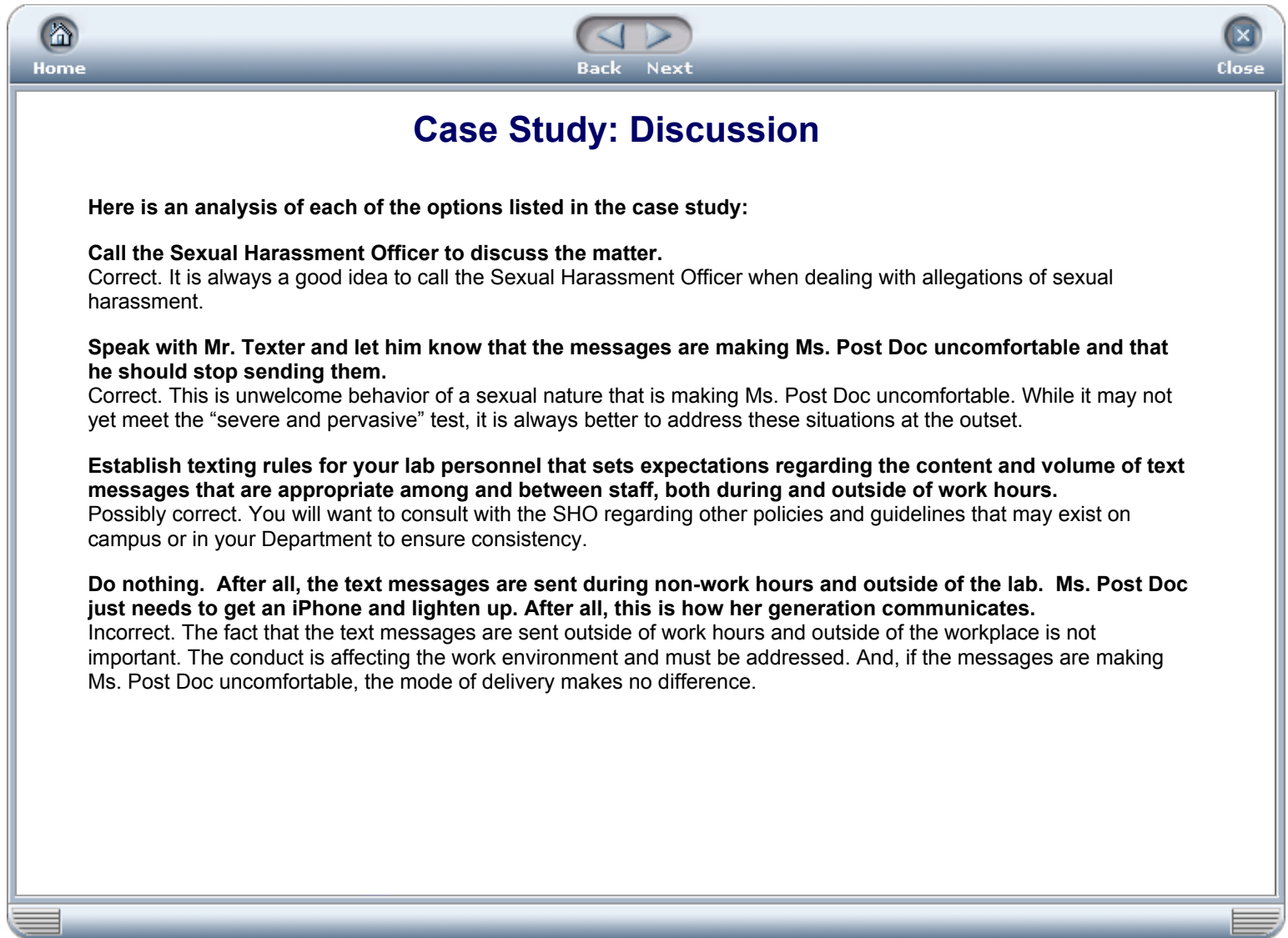


Which of the following options would you recommend? (You may select more than one option.)

- You should call the Sexual Harassment Officer to discuss the matter.
- Speak with Mr. Texter and let him know that the messages are making Ms. Post Doc uncomfortable and that he should stop sending them.
- Establish texting rules for your lab personnel that sets expectations regarding the content and volume of text messages that are appropriate among and between staff, both during and outside of work hours.
- Do nothing. After all, the text messages are sent during non-work hours and outside of the lab. Ms. Post Doc just needs to get an iPhone and lighten up. After all, this is how her generation communicates.

Several of these options MAY BE CORRECT depending upon the circumstances.

Click the Next button to read an analysis of each of these options.



Case Study: Discussion

Here is an analysis of each of the options listed in the case study:

Call the Sexual Harassment Officer to discuss the matter.
Correct. It is always a good idea to call the Sexual Harassment Officer when dealing with allegations of sexual harassment.

Speak with Mr. Texter and let him know that the messages are making Ms. Post Doc uncomfortable and that he should stop sending them.
Correct. This is unwelcome behavior of a sexual nature that is making Ms. Post Doc uncomfortable. While it may not yet meet the "severe and pervasive" test, it is always better to address these situations at the outset.

Establish texting rules for your lab personnel that sets expectations regarding the content and volume of text messages that are appropriate among and between staff, both during and outside of work hours.
Possibly correct. You will want to consult with the SHO regarding other policies and guidelines that may exist on campus or in your Department to ensure consistency.

Do nothing. After all, the text messages are sent during non-work hours and outside of the lab. Ms. Post Doc just needs to get an iPhone and lighten up. After all, this is how her generation communicates.
Incorrect. The fact that the text messages are sent outside of work hours and outside of the workplace is not important. The conduct is affecting the work environment and must be addressed. And, if the messages are making Ms. Post Doc uncomfortable, the mode of delivery makes no difference.


Home Back Next Close

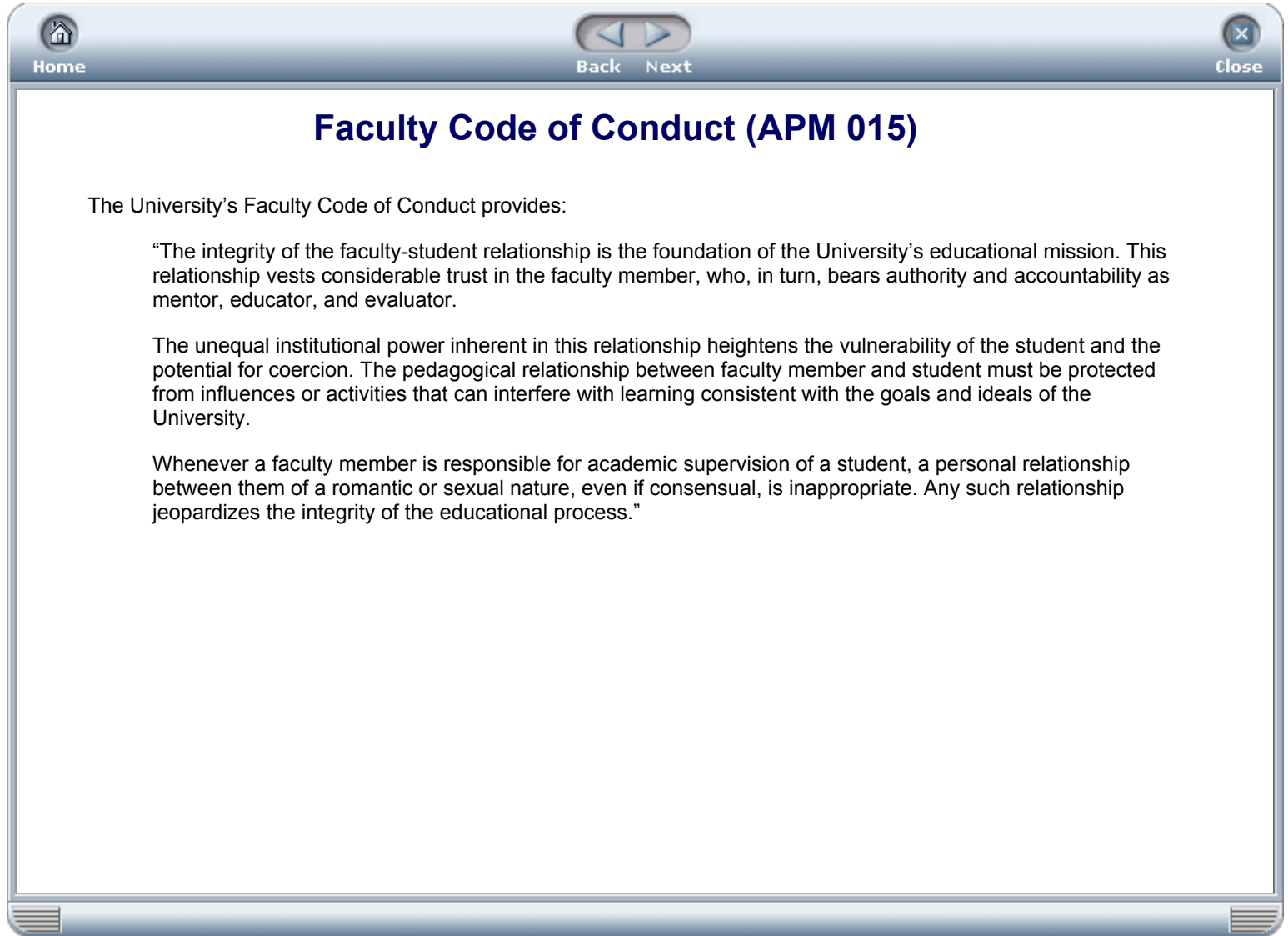
Consensual Relationships

Consensual romantic relationships between members of the University community do not fall within the scope of the University's Policy on Sexual Harassment.

However, such relationships may be subject to other policies, including:

- The UC Faculty Code of Conduct (Academic Personnel Manual Section 015)
- Campus policies concerning conflicts of interest arising out of consensual relationships





Faculty Code of Conduct (APM 015)

The University's Faculty Code of Conduct provides:

"The integrity of the faculty-student relationship is the foundation of the University's educational mission. This relationship vests considerable trust in the faculty member, who, in turn, bears authority and accountability as mentor, educator, and evaluator.

The unequal institutional power inherent in this relationship heightens the vulnerability of the student and the potential for coercion. The pedagogical relationship between faculty member and student must be protected from influences or activities that can interfere with learning consistent with the goals and ideals of the University.

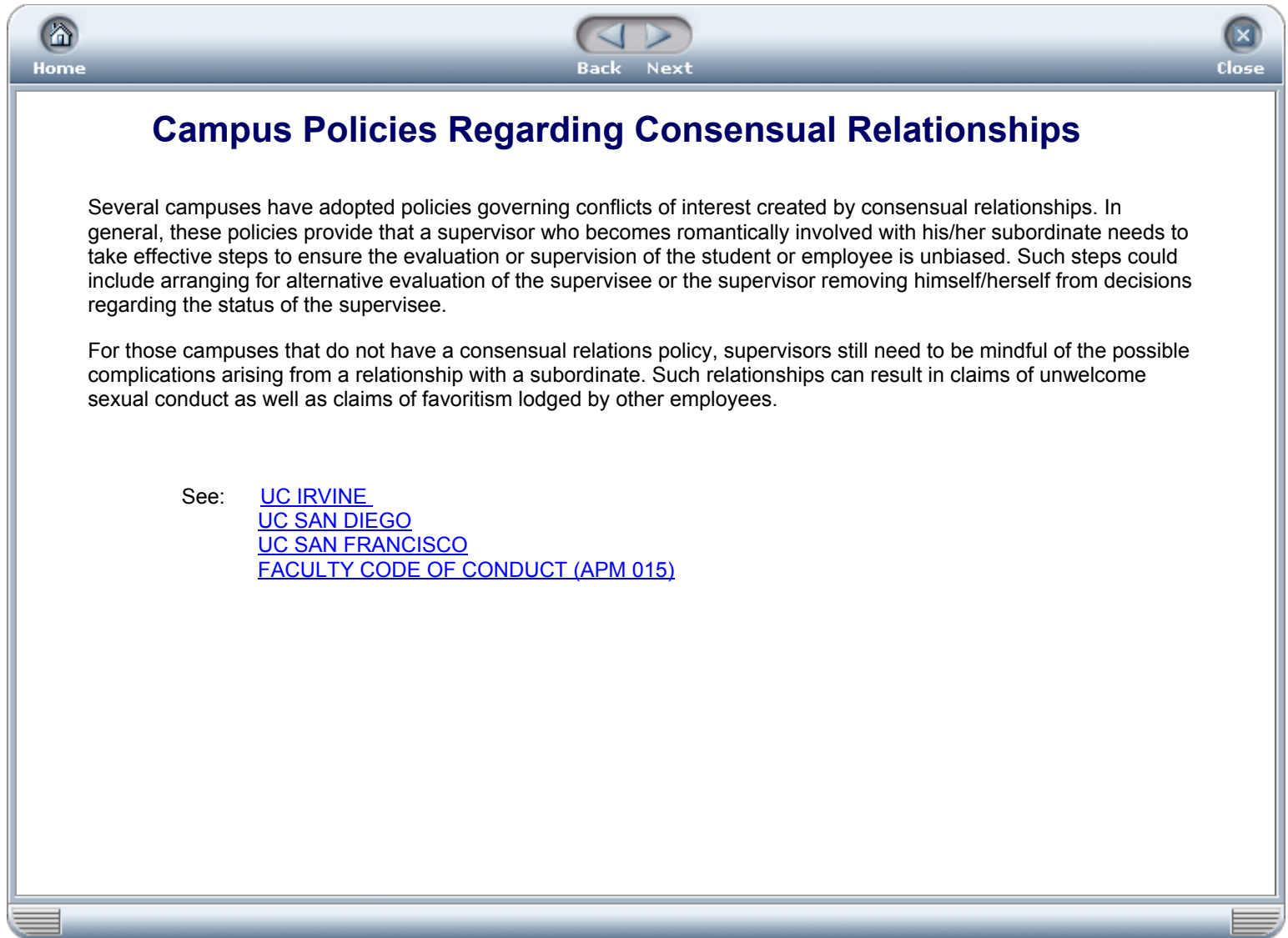
Whenever a faculty member is responsible for academic supervision of a student, a personal relationship between them of a romantic or sexual nature, even if consensual, is inappropriate. Any such relationship jeopardizes the integrity of the educational process."

Faculty Code of Conduct (Continued)

The Code further delineates that the following conduct is unacceptable:

- Entering into a romantic or sexual relationship with any student for whom a faculty member has, or should reasonably expect to have in the future, academic responsibility (instructional, evaluative, or supervisory).
- Exercising academic responsibility (instructional, evaluative, or supervisory) for any student with whom a faculty member has a romantic or sexual relationship.

Additional Reading:
[UC Faculty Code of Conduct](#) (142k PDF)



Campus Policies Regarding Consensual Relationships

Several campuses have adopted policies governing conflicts of interest created by consensual relationships. In general, these policies provide that a supervisor who becomes romantically involved with his/her subordinate needs to take effective steps to ensure the evaluation or supervision of the student or employee is unbiased. Such steps could include arranging for alternative evaluation of the supervisee or the supervisor removing himself/herself from decisions regarding the status of the supervisee.

For those campuses that do not have a consensual relations policy, supervisors still need to be mindful of the possible complications arising from a relationship with a subordinate. Such relationships can result in claims of unwelcome sexual conduct as well as claims of favoritism lodged by other employees.

See: [UC IRVINE](#)
[UC SAN DIEGO](#)
[UC SAN FRANCISCO](#)
[FACULTY CODE OF CONDUCT \(APM 015\)](#)


HomeBack NextClose

Case Study: Chad Chancey

Milli Brun is a graduate student in the school of Humanities. Her dissertation advisor, Dr. Chad Chancey, has asked her out for drinks on several occasions and she has gladly accompanied him. Dr. Chancey is vaguely aware that there may be a restriction on his behavior, but he is not certain how to handle the situation.

Which of the following options would you recommend?
(You may select more than one option)

- Dr. Chancey should avoid any romantic entanglement with Ms. Brun **because any relationship with a student** violates University policy.
- Dr. Chancey should call his Sexual Harassment Officer to discuss the matter.
- Dr. Chancey should just pursue a relationship with Ms. Brun without regard to any University policy as this is a private matter between two adults.



HomeBack NextClose

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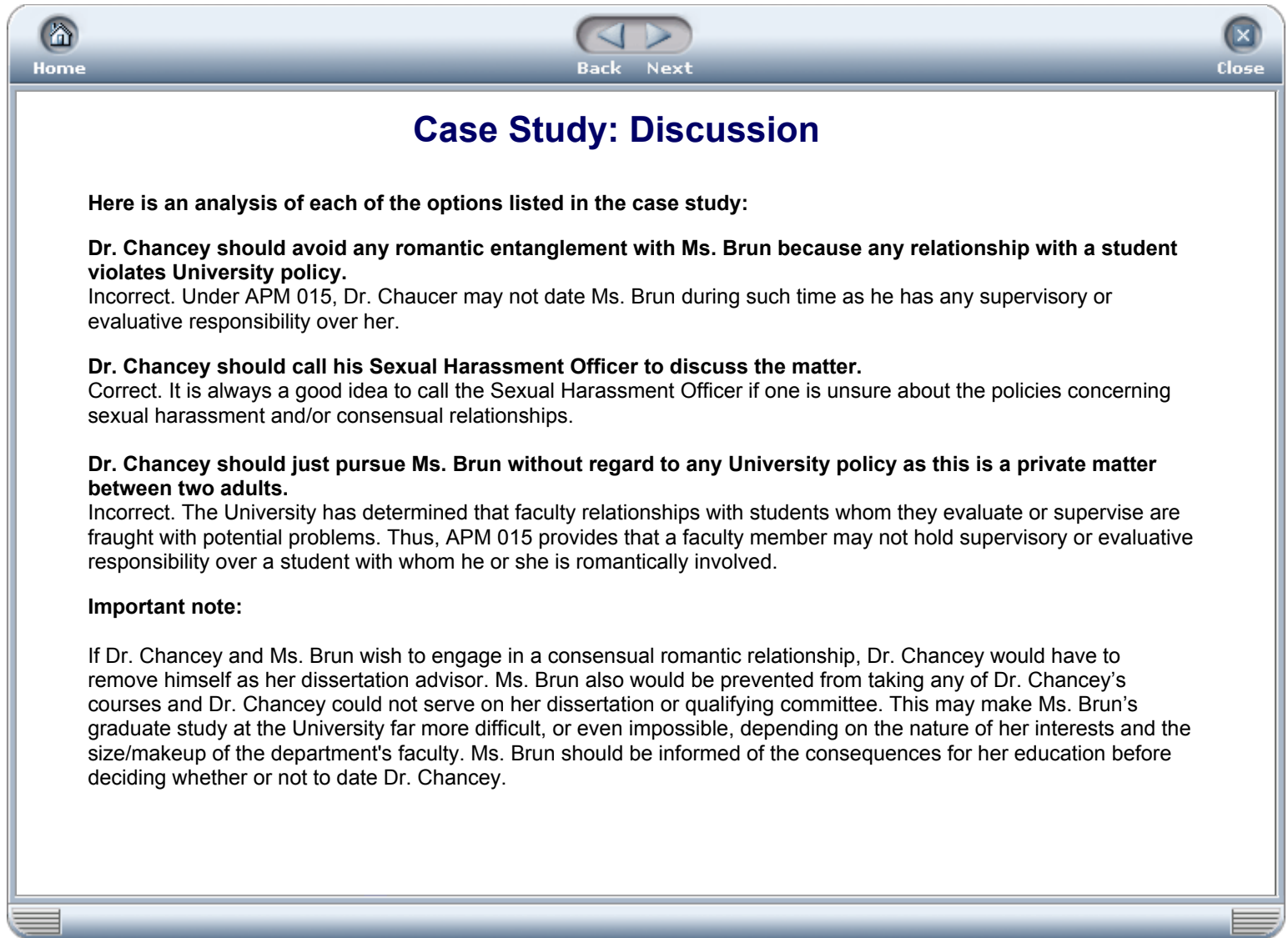
Which of the following options would you recommend?
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- Dr. Chancey should just pursue a relationship with Ms. Brun without regard to any University policy as this is a private matter between two adults.

That is CORRECT.

Click the Next button to read an analysis of each of these options.





Case Study: Discussion

Here is an analysis of each of the options listed in the case study:

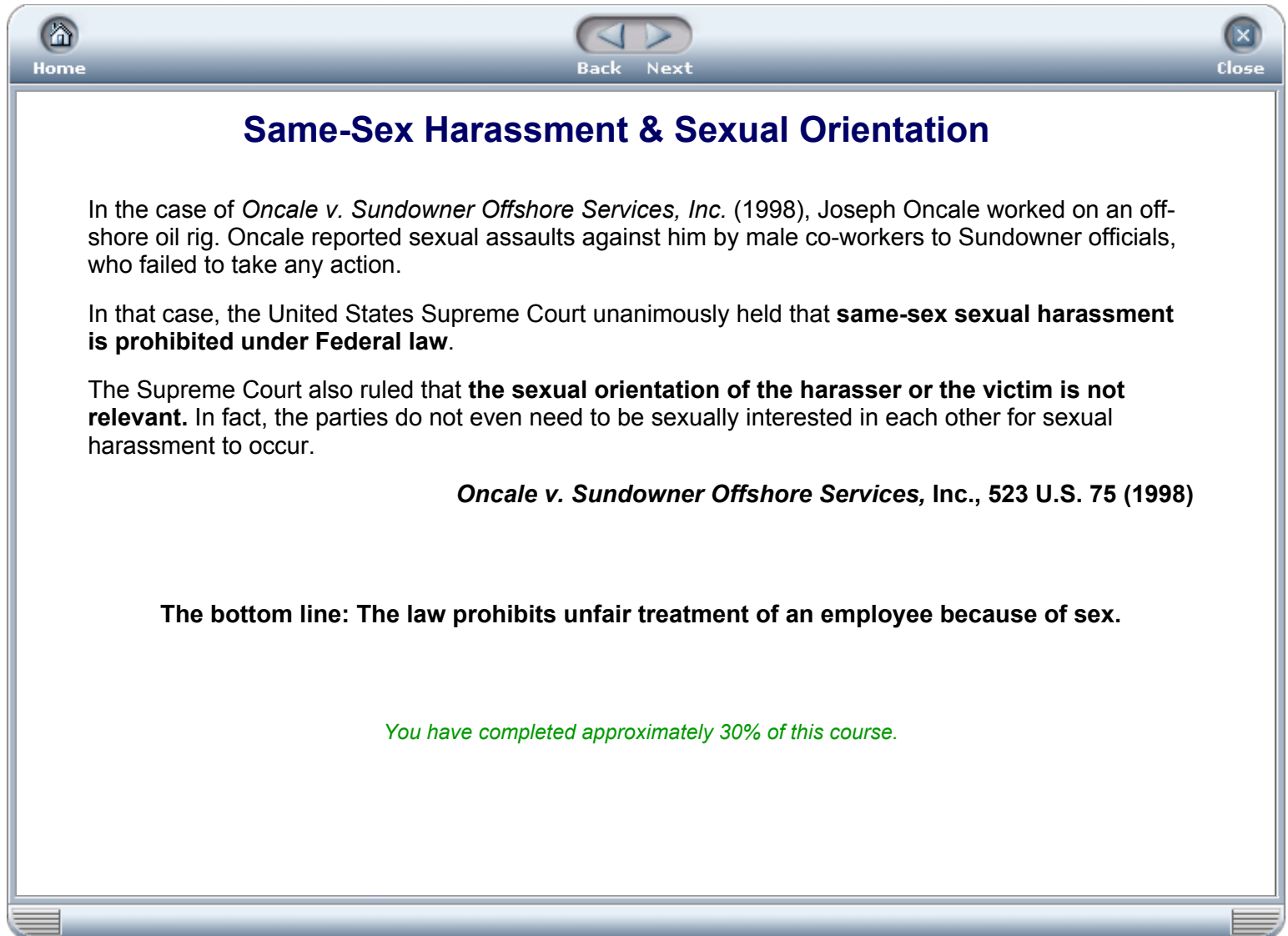
Dr. Chancey should avoid any romantic entanglement with Ms. Brun because any relationship with a student violates University policy.
Incorrect. Under APM 015, Dr. Chaucer may not date Ms. Brun during such time as he has any supervisory or evaluative responsibility over her.

Dr. Chancey should call his Sexual Harassment Officer to discuss the matter.
Correct. It is always a good idea to call the Sexual Harassment Officer if one is unsure about the policies concerning sexual harassment and/or consensual relationships.

Dr. Chancey should just pursue Ms. Brun without regard to any University policy as this is a private matter between two adults.
Incorrect. The University has determined that faculty relationships with students whom they evaluate or supervise are fraught with potential problems. Thus, APM 015 provides that a faculty member may not hold supervisory or evaluative responsibility over a student with whom he or she is romantically involved.

Important note:

If Dr. Chancey and Ms. Brun wish to engage in a consensual romantic relationship, Dr. Chancey would have to remove himself as her dissertation advisor. Ms. Brun also would be prevented from taking any of Dr. Chancey's courses and Dr. Chancey could not serve on her dissertation or qualifying committee. This may make Ms. Brun's graduate study at the University far more difficult, or even impossible, depending on the nature of her interests and the size/makeup of the department's faculty. Ms. Brun should be informed of the consequences for her education before deciding whether or not to date Dr. Chancey.



Same-Sex Harassment & Sexual Orientation

In the case of *Oncale v. Sundowner Offshore Services, Inc.* (1998), Joseph Oncale worked on an off-shore oil rig. Oncale reported sexual assaults against him by male co-workers to Sundowner officials, who failed to take any action.

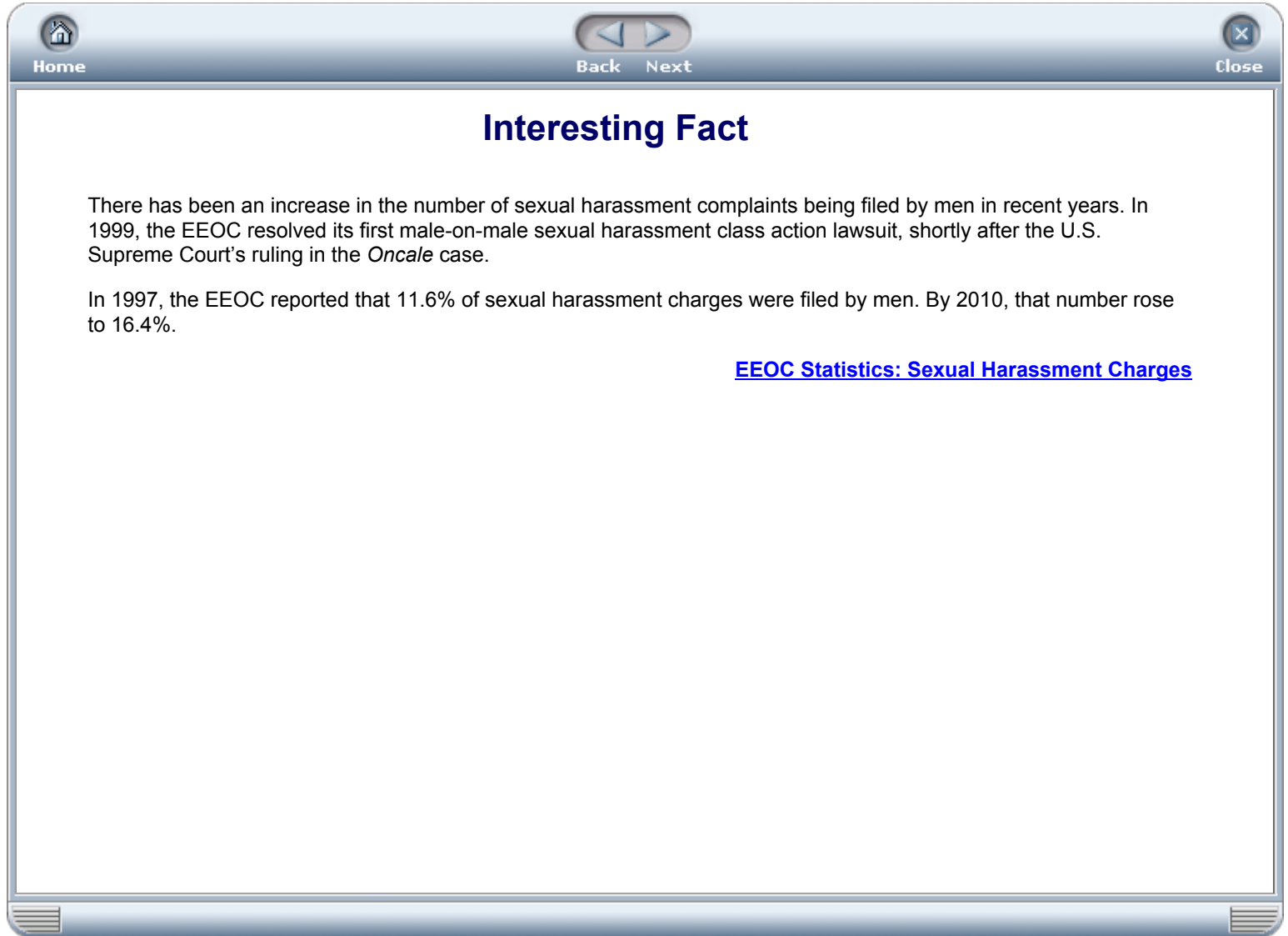
In that case, the United States Supreme Court unanimously held that **same-sex sexual harassment is prohibited under Federal law.**

The Supreme Court also ruled that **the sexual orientation of the harasser or the victim is not relevant.** In fact, the parties do not even need to be sexually interested in each other for sexual harassment to occur.

Oncale v. Sundowner Offshore Services, Inc., 523 U.S. 75 (1998)

The bottom line: The law prohibits unfair treatment of an employee because of sex.

You have completed approximately 30% of this course.



Interesting Fact

There has been an increase in the number of sexual harassment complaints being filed by men in recent years. In 1999, the EEOC resolved its first male-on-male sexual harassment class action lawsuit, shortly after the U.S. Supreme Court's ruling in the *Oncale* case.

In 1997, the EEOC reported that 11.6% of sexual harassment charges were filed by men. By 2010, that number rose to 16.4%.

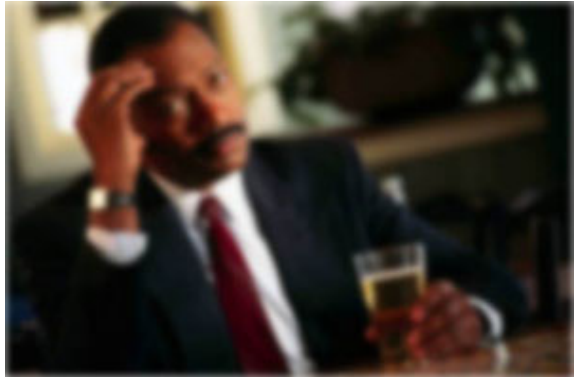
[EEOC Statistics: Sexual Harassment Charges](#)

HomeBack NextClose

Case Study: Professor Knothanks

Several male faculty in the Engineering Department invite a new male faculty member, Associate Professor Knothanks, to a strip bar, explaining that this is a bonding event for the “guys.” Professor Knothanks attends, but is uncomfortable with the setting, behavior and discussion at the event. He refuses subsequent invitations with the same group.

The department chair tells Professor Knothanks that he will not do well in the department if he cannot develop relationships with his fellow faculty members. Professor Knothanks is subsequently assigned to teach the largest and most unpopular courses, and is shunned by his male peers. Eventually, he suffers an unfavorable departmental merit review.



Does Professor Knothanks have a claim of sexual harassment?

Yes


No

Home Back Next Close

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Does Professor Knothanks have a claim of sexual harassment?

Yes **That is CORRECT.**

No **Click the Next button to read a discussion of this case study.**

Case Study: Discussion

Professor Knothanks can state a claim of sexual harassment if he is required to participate in sexually based activities. Sexual Harassment laws protect men as well as women.

In the case of *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998), the Supreme Court wrote:

“Title VII’s prohibition of discrimination ‘because of . . . sex’ protects men as well as women. There is no justification in Title VII’s language or the Court’s precedents for a categorical rule barring a claim of discrimination ‘because of . . . sex’ merely because the plaintiff and the defendant (or the person charged with acting on behalf of the defendant) are of the same sex.”

***Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75 (1998)**

Home Back Next Close

Third Party Harassment

A hostile environment may arise for a person who views or hears sexual conduct in the workplace even if the conduct was not directed at that person. This is sometimes referred to as “third party harassment.”

At least one California court has held that an employee who knows that another employee is being harassed in the workplace may introduce that evidence in his/her harassment case against the employer.

A black and white photograph showing the silhouettes of three people standing in a line. The person on the left is a woman in a business suit, holding a folder or tablet. The person in the middle is a man in a business suit, looking towards the woman on the right. The person on the right is a woman in a business suit, gesturing with her hands as if speaking. The background is a plain, light-colored wall.

Marlene Beyda, a receptionist for L.A. Councilperson Nate Holden, alleged that he and his staff sexually harassed her. At trial, she attempted to introduce evidence that other women had also been sexually harassed. The court found that evidence that other women were harassed may be offered as proof of a hostile work environment if the plaintiff witnessed and was affected by the harassing behavior.

Beyda v. City of Los Angeles, 65 Cal.App.4th (1998)


Home

Back Next

Close

Case Study: Anna Log

Department Chair Anna Log directly supervises three principal analysts. She has worked with Chip Analyst for several years. Recently, the other analysts have noticed that the Chair is requesting that Mr. Analyst meet alone with her in her office behind closed doors quite frequently, and she is very flirtatious with him. She frequently rubs his back or his thighs while sitting in meetings.



Do the analysts have a claim of sexual harassment?

Yes

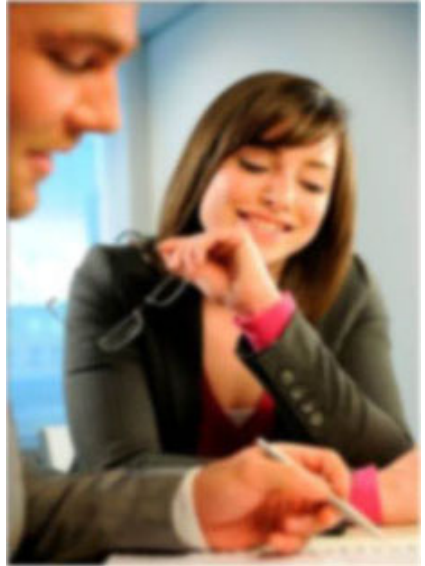
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Home Back Next Close

Case Study: Anna Log

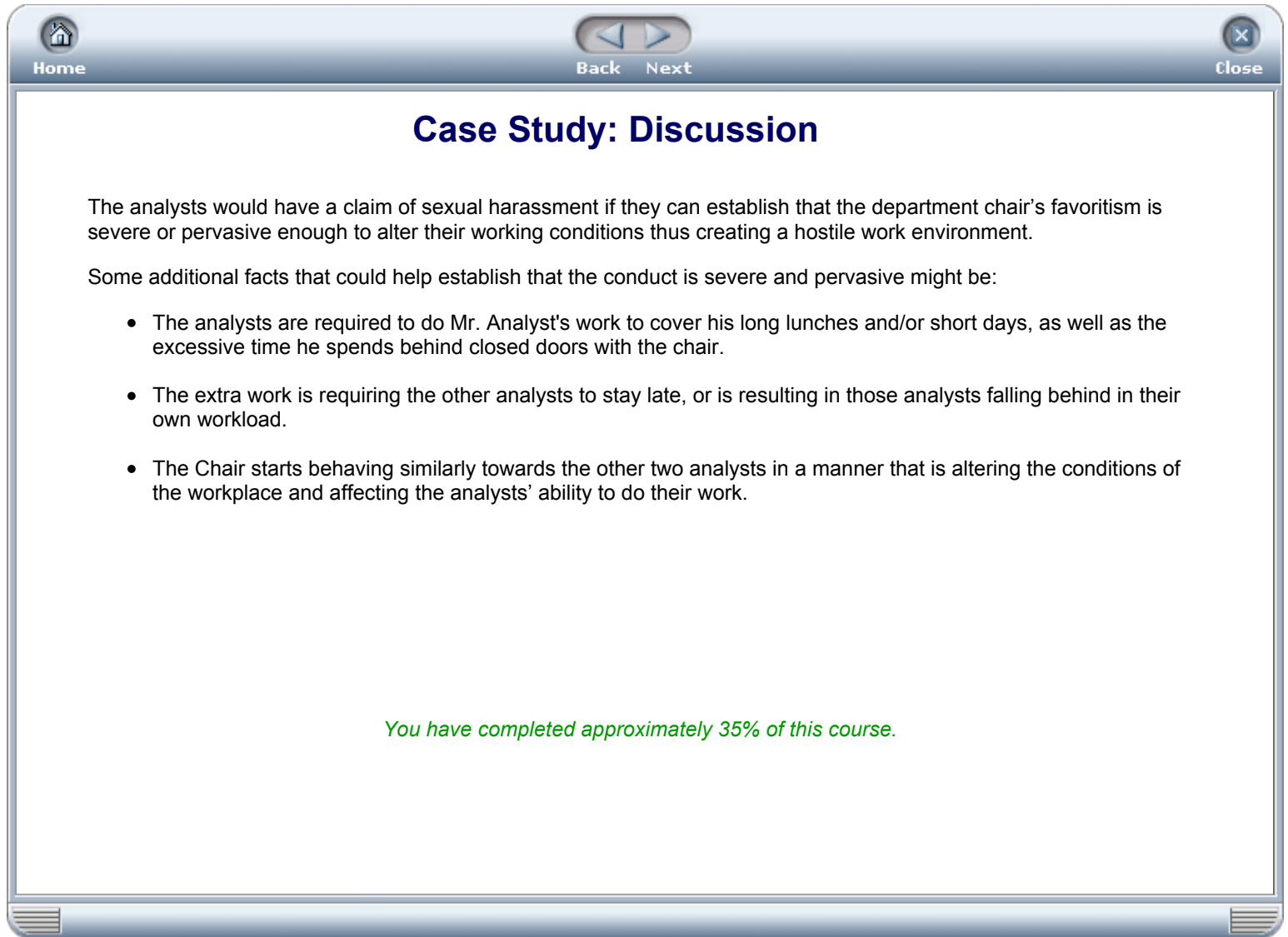
Department Chair Anna Log directly supervises three principal analysts. She has worked with Chip Analyst for several years. Recently, the other analysts have noticed that the Chair is requesting that Mr. Analyst meet alone with her in her office behind closed doors quite frequently, and she is very flirtatious with him. She frequently rubs his back or his thighs while sitting in meetings.



Do the analysts have a claim of sexual harassment?

Yes **That is POSSIBLY CORRECT.**
Click the Next button to read a discussion of this case study.

No



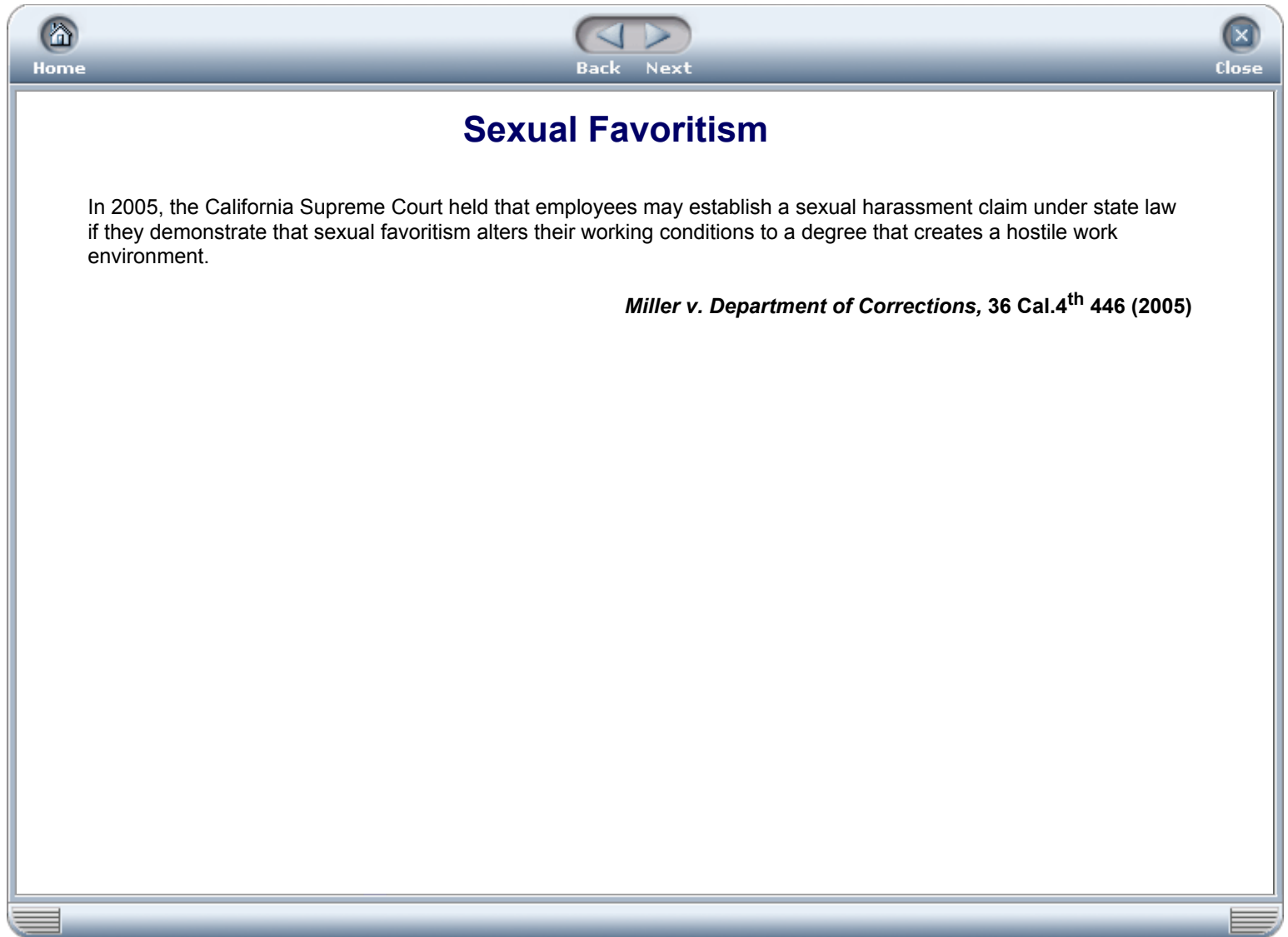
Case Study: Discussion

The analysts would have a claim of sexual harassment if they can establish that the department chair's favoritism is severe or pervasive enough to alter their working conditions thus creating a hostile work environment.

Some additional facts that could help establish that the conduct is severe and pervasive might be:

- The analysts are required to do Mr. Analyst's work to cover his long lunches and/or short days, as well as the excessive time he spends behind closed doors with the chair.
- The extra work is requiring the other analysts to stay late, or is resulting in those analysts falling behind in their own workload.
- The Chair starts behaving similarly towards the other two analysts in a manner that is altering the conditions of the workplace and affecting the analysts' ability to do their work.

You have completed approximately 35% of this course.



Home

Back Next

Close

Sexual Favoritism

In 2005, the California Supreme Court held that employees may establish a sexual harassment claim under state law if they demonstrate that sexual favoritism alters their working conditions to a degree that creates a hostile work environment.


Miller v. Department of Corrections, 36 Cal.4th 446 (2005)

Home Back Next Close

Key Case: Miller v. Department of Corrections (2005)

In *Miller v. Department of Corrections* (2005), two former employees at the Valley State Prison for Women claimed that the warden of the prison at which they were employed accorded unwarranted favorable treatment to numerous female employees with whom the warden was having sexual affairs, and that such conduct constituted sexual harassment.

The Court held that while an isolated instance of favoritism on the part of a supervisor toward a female paramour ordinarily would not constitute sexual harassment, widespread sexual favoritism in the workplace may create a hostile work environment. Sexual harassment occurs when the demeaning message is conveyed to female employees that they are viewed by management as "sexual playthings" or that the way for women to get ahead in the workplace is to engage in sexual conduct with supervisors.




***Miller v. Department of Corrections*, 36 Cal. 4th 446 (2005)**

Home Back Next Close

Key Case: EEOC v. National Education Association (2005)

In *EEOC v. National Education Association* (2005), the Court held that an individual who harasses both men and women may be found to have engaged in sexual harassment if the women in the workplace are treated worse than the men (or vice versa).

In this case, there was evidence that the male supervisor was more threatening to the women than the men in his office. The Court also emphasized that the supervisor's intent was irrelevant – it is his behavior, and the women's reaction to it, that determines whether or not there was a hostile environment for women.




***EEOC v. National Education Association*, 422 F. 3d 1522 (9th Cir. 2005)**

Home Back Next Close

Case Study: Bill Bully

Employees in the Data Input Department have been moved to a large room where more than a dozen of them work from several close cubicles. Bill Bully is a large and rather aggressive employee who likes to pick on Scott Small about everything from his thick accent and unique hairstyle, to the way he walks. Mr. Small is quite fearful of Mr. Bully, and Mr. Bully is quite pleased that he has the power to make him fearful.

Many of the employees who witness the bullying behavior have complained to the Department Manager



Is this sexual or other harassment?

Yes

No


Submit

Home Back Next Close

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Many of the employees who witness the bullying behavior have complained to the Department Manager



Is this sexual or other harassment?

Yes **That may be CORRECT.**
Click the Next button to read a discussion of this case study.

No

Case Study: Discussion

Bullying is Harassment


The laws discussed in this course prohibit discrimination on the basis of protected characteristics, including sex and national origin. These obligations are equally in force when peer harassment is sufficiently serious that it creates a hostile environment and such harassment is encouraged, tolerated, not adequately addressed, or ignored.

Harassing conduct may take many forms, including:

- verbal acts and name-calling
- graphic and written statements, which may include use of cell phones or the Internet
- other conduct that may be physically threatening, harmful, or humiliating

Appropriate steps to end harassment may include:

- separating the accused harasser and the target, if possible
- providing counseling for the target and/or harasser
- taking disciplinary action against the harasser



Application of the Protections from Harassment

University policy emphasizes that the institution is “committed to creating and maintaining a community where all persons who participate in University programs and activities can work and learn together in an atmosphere free of all forms of harassment, exploitation, or intimidation.”

The UC policy against sexual harassment has broad application and governs each of its campuses, its DOE Laboratories, its Medical Centers, and the Office of the President, including Agriculture and Natural Resources, and all auxiliary University locations.



Breadth of the Policy

Who is protected? Not only does California law prohibit harassment of employees, it also prohibits harassment of applicants, and persons providing services pursuant to a contract. Faculty, staff and students are all covered by University policy.

From whom are individuals protected? University policy states:

“Sexual harassment may include incidents between any members of the University community, including faculty and other academic appointees, staff, coaches, housestaff, students, and nonstudent or non-employee participants in University programs, such as vendors, contractors, visitors, and patients.”

California law was amended in 2003 to clarify that employers have an obligation to protect employees from sexual harassment by customers, vendors, clients or other third-parties who come in contact with employees as part of their normal day-to-day work activities. There have also been instances of alumni harassing students at University-related events. The University is obligated to protect students and employees from such harassment.

When does the policy apply? Obviously, the policy prohibits harassing conduct that occurs at the workplace, but what about conduct that occurs at an out-of-state conference or a happy hour attended by several members of the department?

A conference that one is required to attend because of one’s employment is a work-related event and, therefore, the University’s policy is just as applicable as if the conduct were occurring at a University location. A happy hour event is a closer call. It might be deemed a work-related event depending on how it was advertised and what occurred at the event. From an ethical standpoint, it is best to avoid unwelcome sexual behavior whatever the context.


HomeBack NextClose

Case Study: Dana Deadline

Dana Deadline works as an Analyst for a large scientific research unit that frequently submits proposals for funding in response to Requests for Proposals for federal and state projects. Because the proposals are often finalized at the last minute, Dana is usually rushing to the nearest US Post Office (USPS), located only one mile from campus. Dana informs her Supervisor that she wants to be re-assigned to a different position because the postal clerk often makes comments to her about her physique, brags about his sexual prowess, and asks her out on dates.

Which of the following should the supervisor do?
(You may select more than one option.)


- Report the conduct to the Sexual Harassment Officer.
- Share the complaint with the USPS and take no further action since it is the USPS employee's behavior that is causing the problem.
- Send a memo to all research unit employees requiring that proposals be ready 24 hours in advance of any deadline so that Dana has time to travel to another USPS location.
- Talk to the USPS employee and tell him his behavior is making Dana uncomfortable and it must stop.
- Ensure that Dana knows about the Sexual Harassment policy and campus resources available to her.



Home Back Next Close

Case Study: Dana Deadline

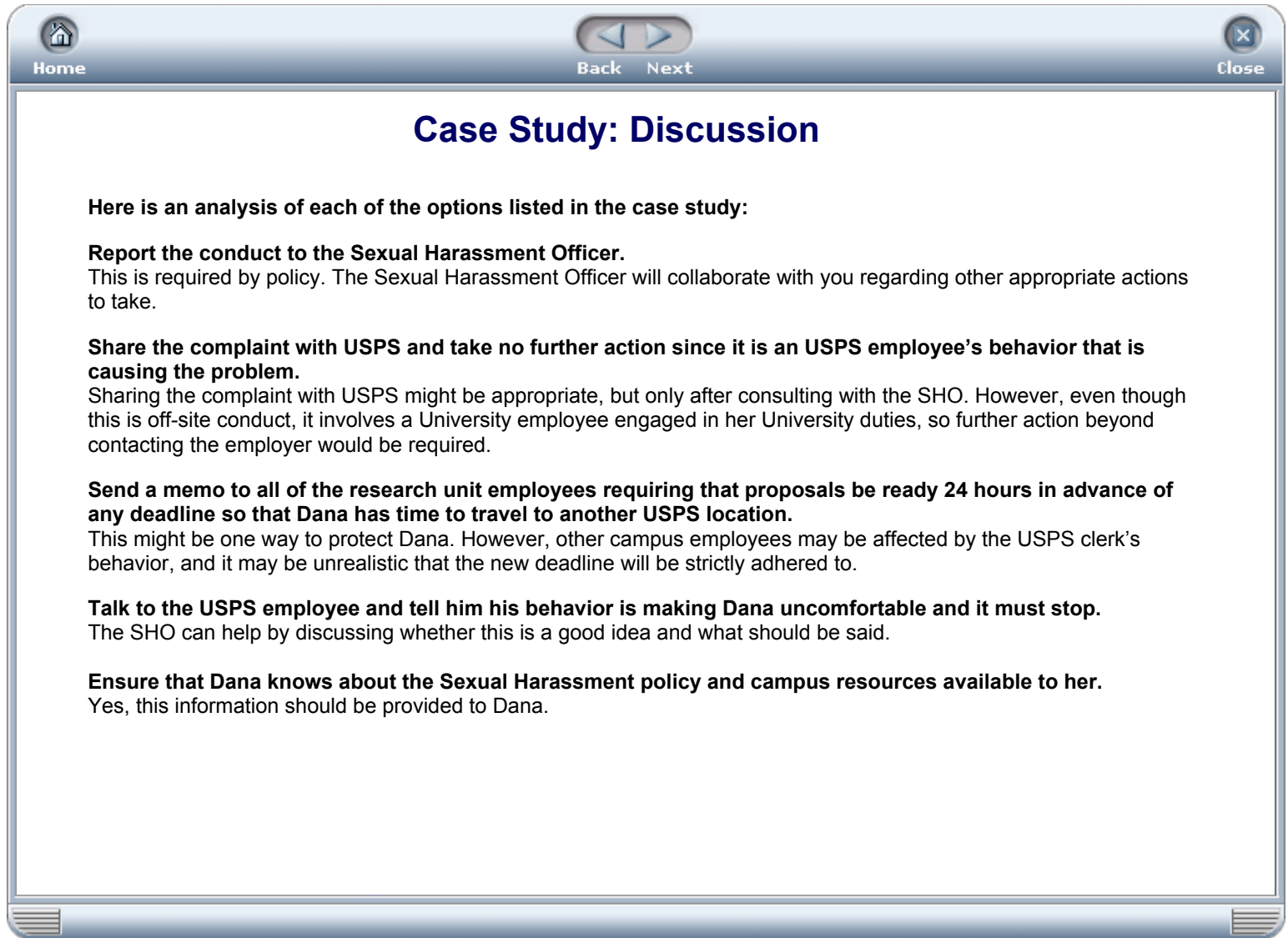
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- Talk to the USPS employee and tell him his behavior is making Dana uncomfortable and it must stop.
- Ensure that Dana knows about the Sexual Harassment policy and campus resources available to her.

Several of these options MAY BE CORRECT depending upon the circumstances. Click the Next button to read an analysis of each of these options.



Case Study: Discussion

Here is an analysis of each of the options listed in the case study:

Report the conduct to the Sexual Harassment Officer.
This is required by policy. The Sexual Harassment Officer will collaborate with you regarding other appropriate actions to take.

Share the complaint with USPS and take no further action since it is an USPS employee's behavior that is causing the problem.
Sharing the complaint with USPS might be appropriate, but only after consulting with the SHO. However, even though this is off-site conduct, it involves a University employee engaged in her University duties, so further action beyond contacting the employer would be required.

Send a memo to all of the research unit employees requiring that proposals be ready 24 hours in advance of any deadline so that Dana has time to travel to another USPS location.
This might be one way to protect Dana. However, other campus employees may be affected by the USPS clerk's behavior, and it may be unrealistic that the new deadline will be strictly adhered to.

Talk to the USPS employee and tell him his behavior is making Dana uncomfortable and it must stop.
The SHO can help by discussing whether this is a good idea and what should be said.


Ensure that Dana knows about the Sexual Harassment policy and campus resources available to her.
Yes, this information should be provided to Dana.

Home Back Next Close

Gender Discrimination

Discrimination based on gender is prohibited under both Federal and California state law.

It is unlawful to treat an employee or employees differently because of their gender when the treatment affects the "terms or conditions of employment." Terms or conditions of employment include things like the employee's position, pay, title, hours, vacation time. Whether or not a person is hired in the first place is also considered a term or condition of employment.



The image shows two signs side-by-side. The left sign is white with a black silhouette of a woman and the word "WOMEN" below it. The right sign is white with a black silhouette of a man and the word "MEN" below it. Both signs are set against a dark background with a warm, orange glow.



Home



Back Next



Close

Key Case: *Price Waterhouse v. Hopkins* (1989)

In the case of *Price Waterhouse v. Hopkins* (1989), the United States Supreme Court recognized sex stereotyping can be a factor in proving a discrimination claim. Ann Hopkins worked as an accountant for Price Waterhouse. She was proposed as a candidate for partnership. During the process of evaluating her candidacy, the firm solicited evaluations of her from its partners, nearly all of whom were men. In those evaluations, which split on the question as to whether Hopkins should be granted or denied partnership, her supporters strongly praised her abilities and record.

However, a number of evaluations criticized her interpersonal skills and noted her as being abrasive. Several of the evaluations made comments implying that she acted masculine. One partner suggested she could improve her chances for partnership by walking, talking, and dressing more femininely. Hopkins was not offered or denied the promotion. Instead, she was held for reconsideration.



After the partners in her office refused to re-propose her for partnership the next year, she resigned and sued. One of her arguments was that the evaluations had been based on sexual stereotyping. A plurality of the Court agreed that “sex stereotyping” was relevant to the case:

“An employer who objects to aggressiveness in women but whose positions require this trait places women in an intolerable and impermissible catch 22: out of a job if they behave aggressively and out of a job if they do not. Title VII lifts women out of this bind.”


***Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989)**

Home Back Next Close

Key Case: Smith v. St. Louis University (1997)

Victorija Smith was an anesthesiology resident at St. Louis University's Hospital. John Schweiss was the chair of her department. Schweiss regularly referred to Smith and the other female residents by their first names or without the title "Doctor," while using "Doctor" and the last names for male residents. Smith was told by other doctors that Schweiss had said he hired Smith to fill his female quota. Schweiss also referred to Smith and another female resident as the "anesthesiology babes." On one occasion, he asked Smith why she had gone into medicine rather than nursing, or getting married.

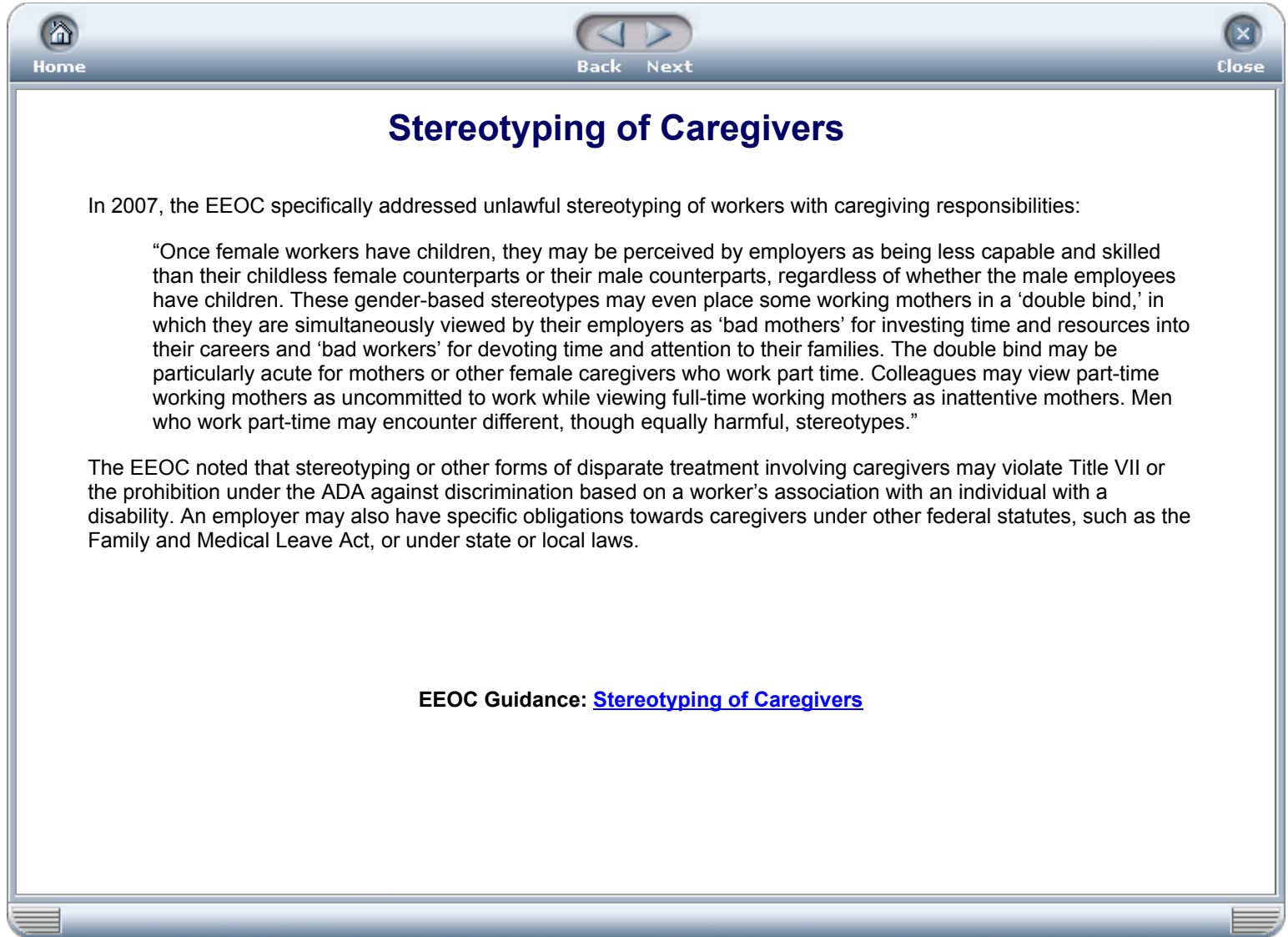
The Court held that the facts were sufficient to allow the case to proceed to trial:



"The predicate acts which support a hostile-environment sexual harassment claim need not be explicitly sexual in nature . . . Rather, the key issue is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not exposed."

Smith v. St. Louis University, 109 F.3d 1261 (1997)

You have completed approximately 40% of this course.



The image is a screenshot of a presentation slide. At the top, there is a navigation bar with a 'Home' button (house icon), 'Back' and 'Next' buttons (left and right arrows), and a 'Close' button (X icon). The main content area has a title 'Stereotyping of Caregivers' in bold blue text. Below the title, there is a paragraph of text starting with 'In 2007, the EEOC specifically addressed unlawful stereotyping of workers with caregiving responsibilities:'. This is followed by a quoted paragraph: '“Once female workers have children, they may be perceived by employers as being less capable and skilled than their childless female counterparts or their male counterparts, regardless of whether the male employees have children. These gender-based stereotypes may even place some working mothers in a ‘double bind,’ in which they are simultaneously viewed by their employers as ‘bad mothers’ for investing time and resources into their careers and ‘bad workers’ for devoting time and attention to their families. The double bind may be particularly acute for mothers or other female caregivers who work part time. Colleagues may view part-time working mothers as uncommitted to work while viewing full-time working mothers as inattentive mothers. Men who work part-time may encounter different, though equally harmful, stereotypes.”'. Below the quote, another paragraph states: 'The EEOC noted that stereotyping or other forms of disparate treatment involving caregivers may violate Title VII or the prohibition under the ADA against discrimination based on a worker’s association with an individual with a disability. An employer may also have specific obligations towards caregivers under other federal statutes, such as the Family and Medical Leave Act, or under state or local laws.' At the bottom center of the slide, there is a line of text: 'EEOC Guidance: [Stereotyping of Caregivers](#)'. The slide is framed by a blue border with a drop shadow.

Home Back Next Close

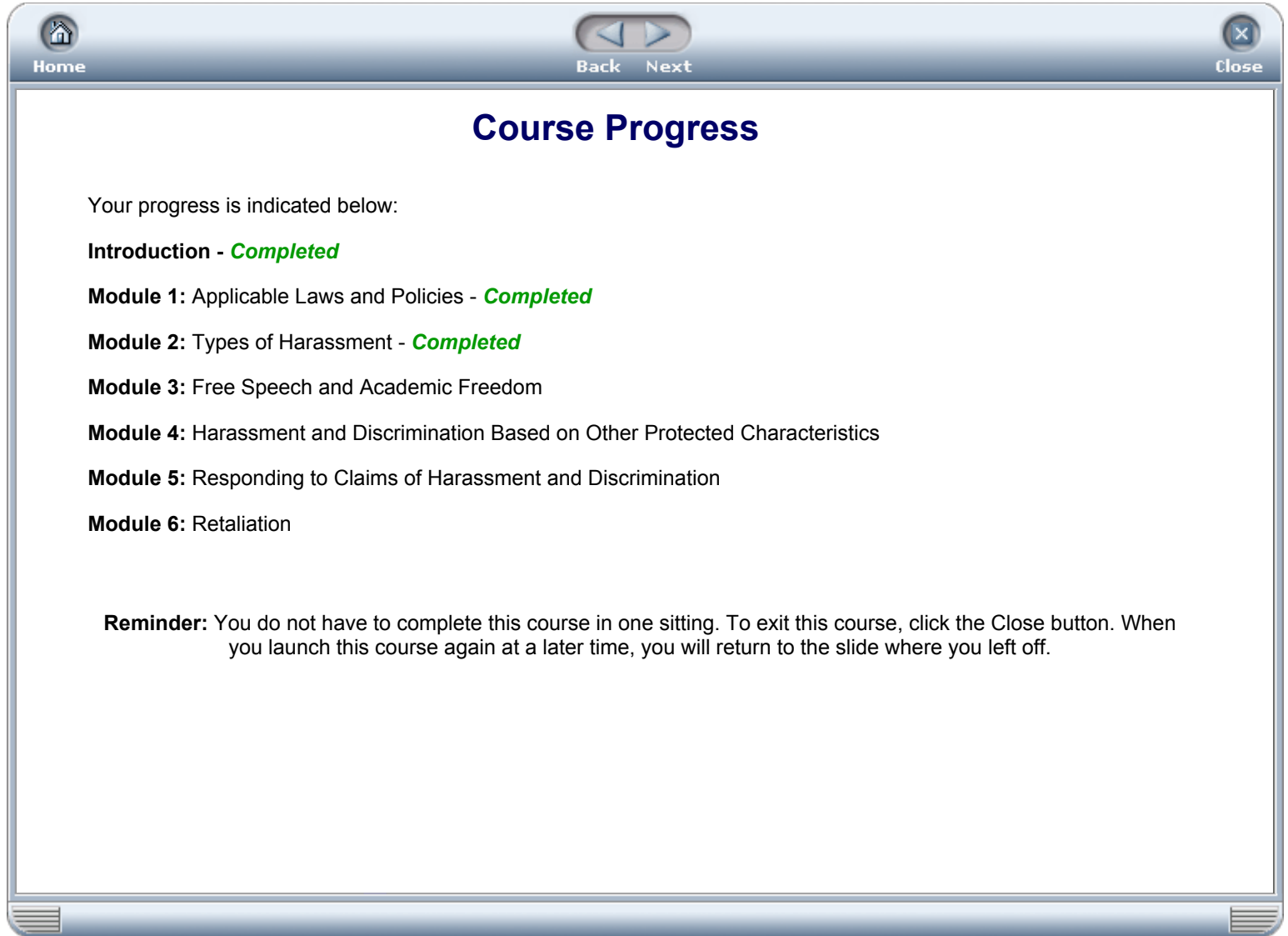
Stereotyping of Caregivers

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EEOC Guidance: [Stereotyping of Caregivers](#)



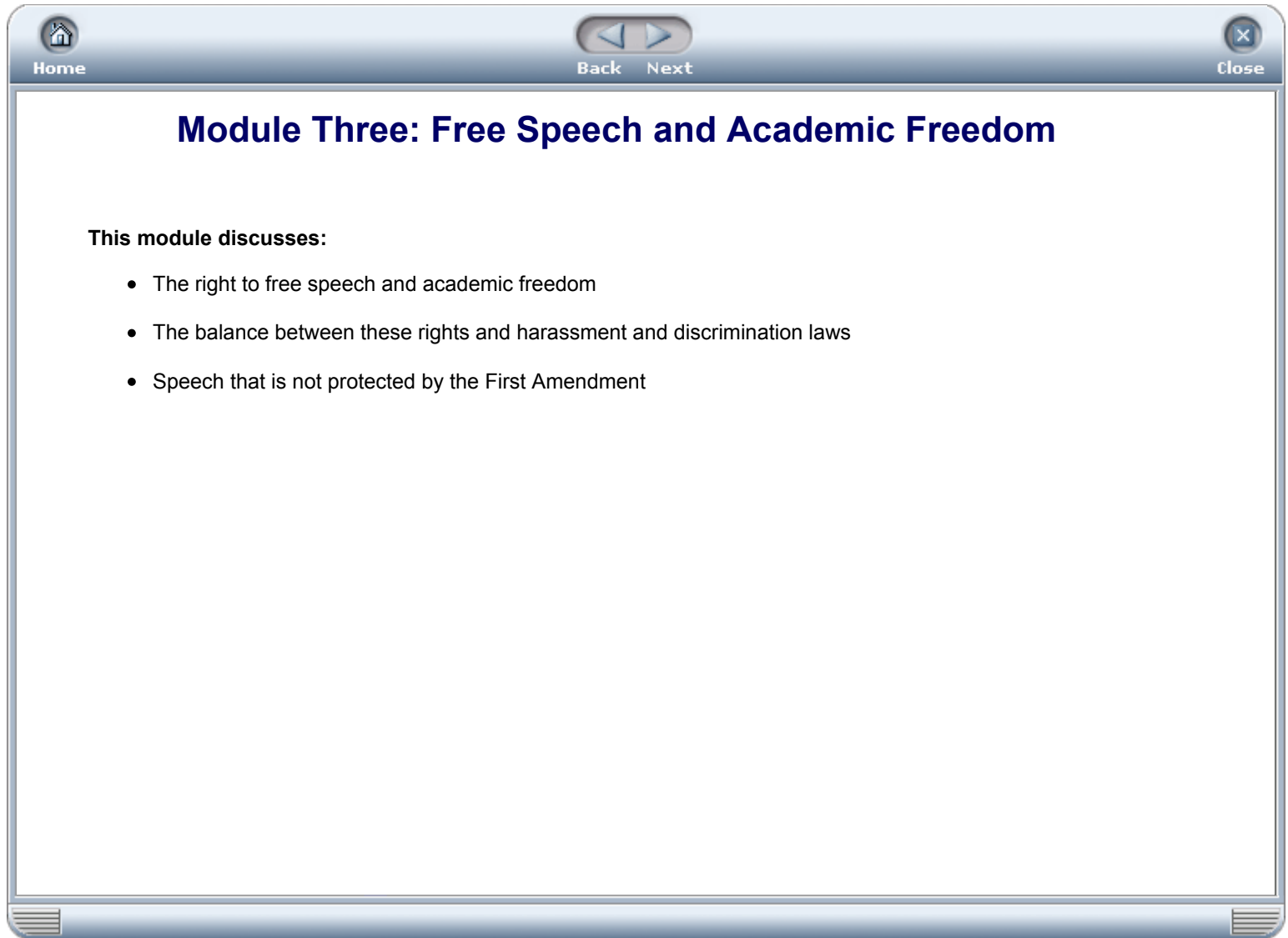
Home Back Next Close

Course Progress

Your progress is indicated below:

- Introduction - **Completed**
- Module 1: Applicable Laws and Policies - **Completed**
- Module 2: Types of Harassment - **Completed**
- Module 3: Free Speech and Academic Freedom
- Module 4: Harassment and Discrimination Based on Other Protected Characteristics
- Module 5: Responding to Claims of Harassment and Discrimination
- Module 6: Retaliation

Reminder: You do not have to complete this course in one sitting. To exit this course, click the Close button. When you launch this course again at a later time, you will return to the slide where you left off.



Module Three: Free Speech and Academic Freedom


This module discusses:

- The right to free speech and academic freedom
- The balance between these rights and harassment and discrimination laws
- Speech that is not protected by the First Amendment

Home Back Next Close

Constitutional Right to Free Speech

Free speech is a constitutionally protected right.



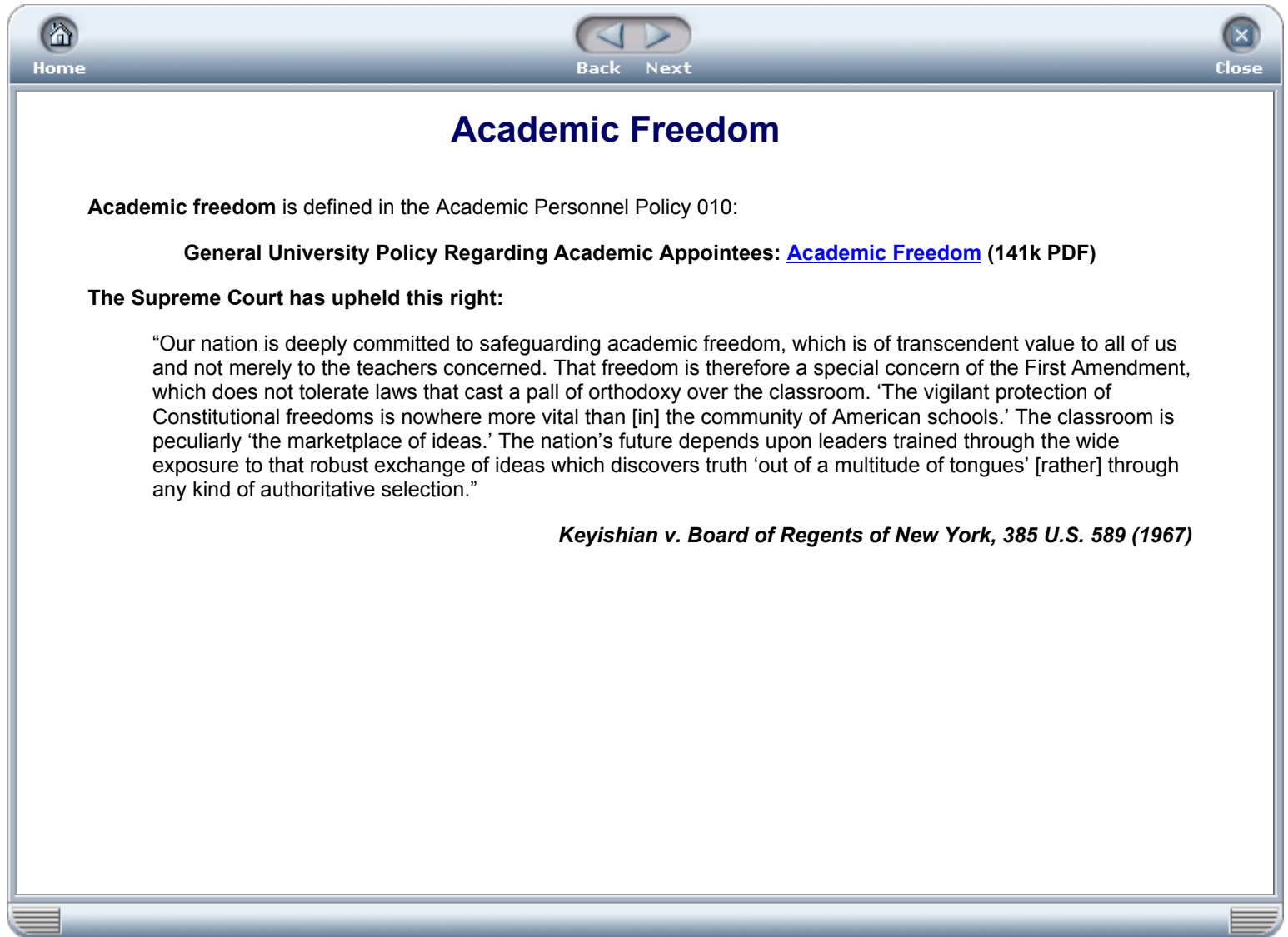
The First Amendment to the U.S. Constitution provides:

“Congress shall make no law . . . abridging the freedom of speech”

Article 1, Section 2 of the California Constitution provides:

“Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press.”

We all have a constitutional right to freedom of speech; however, not all speech is protected, as this module will discuss in greater detail.



Academic Freedom

Academic freedom is defined in the Academic Personnel Policy 010:

General University Policy Regarding Academic Appointees: [Academic Freedom](#) (141k PDF)

The Supreme Court has upheld this right:

“Our nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall of orthodoxy over the classroom. ‘The vigilant protection of Constitutional freedoms is nowhere more vital than [in] the community of American schools.’ The classroom is peculiarly ‘the marketplace of ideas.’ The nation’s future depends upon leaders trained through the wide exposure to that robust exchange of ideas which discovers truth ‘out of a multitude of tongues’ [rather] through any kind of authoritative selection.”

Keyishian v. Board of Regents of New York, 385 U.S. 589 (1967)


University of California Policy

A faculty member's right to academic freedom is expressly granted in the University of California Faculty Code of Conduct that sets forth the professional rights of faculty. It states in part:

"In support of the University's central functions as an institution of higher learning, a major responsibility of the Administration is to protect and encourage the faculty in its teaching, learning, research and public service."

The Code places responsibility on the Administration to guarantee the faculty's right to free inquiry and exchange of ideas, the right to present controversial material relevant to a course of instruction, and the enjoyment of constitutionally protected freedom of expression.

[Faculty Code of Conduct \(45k PDF\), Part I, Introduction](#)



UC Policy on Sexual Harassment: Academic Freedom

The **University's Policy on Sexual Harassment** acknowledges the importance of free speech rights, stating in part:

“As participants in a public university, the faculty and other academic appointees, staff, and students of the University of California enjoy significant free speech protections guaranteed by the First Amendment of the United States Constitution and Article I, Section I of the California Constitution. **This policy is intended to protect members of the University community from discrimination, not to regulate protected speech.** This policy shall be implemented in a manner that recognizes the importance of rights to freedom of speech and expression. The University also has a compelling interest in free inquiry and the collective search for knowledge and thus recognizes principles of academic freedom as a special area of protected speech. Consistent with these principles, no provision of this policy shall be interpreted to prohibit conduct that is legitimately related to the course content, teaching methods, scholarship, or public commentary of an individual faculty member or the educational, political, artistic, or literary expression of students in classrooms and public forums. ...”


[UC Policy on Sexual Harassment](#) (46k PDF), Section H

Home Back Next Close

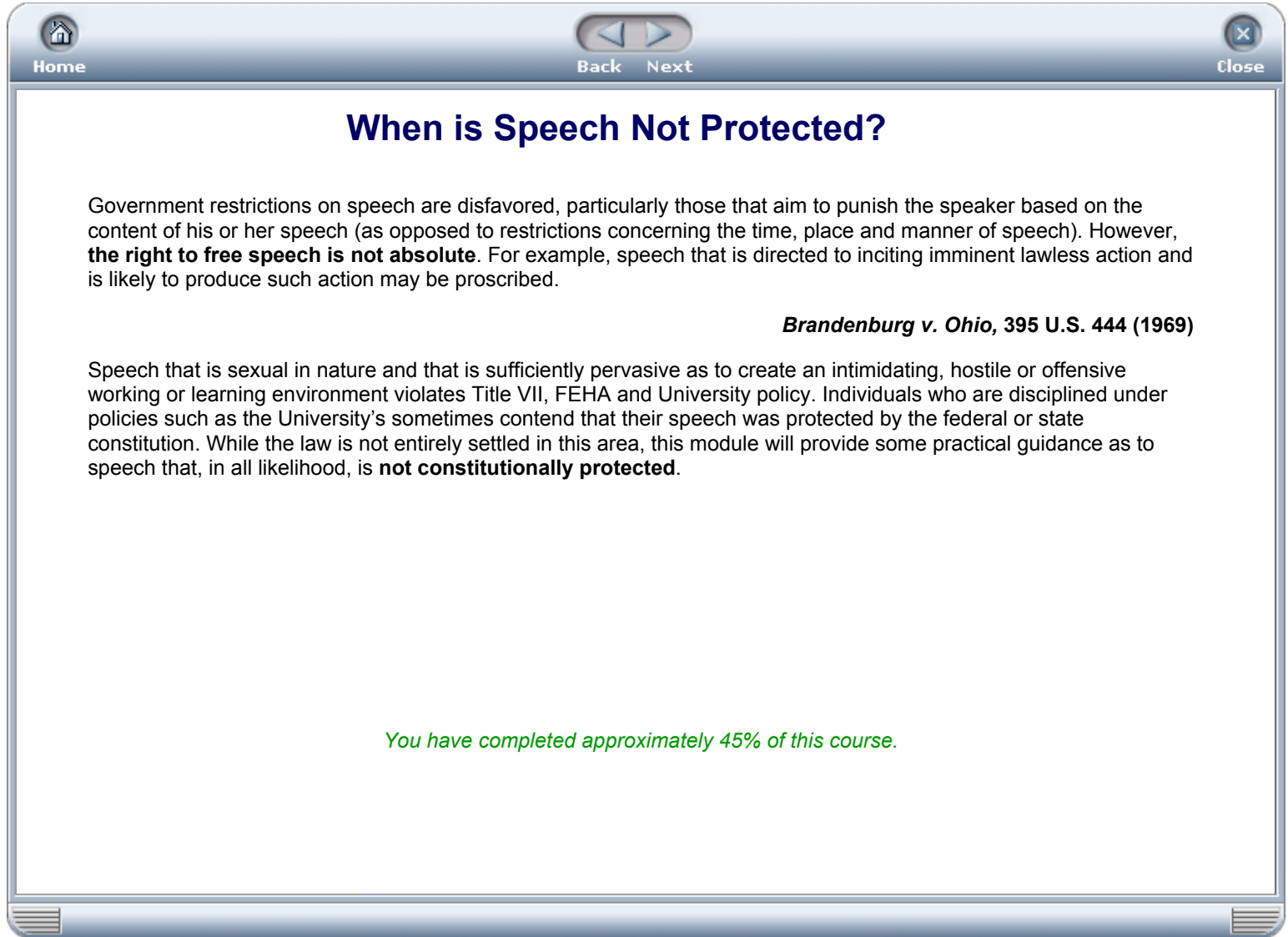
UC Policy on Sexual Harassment: Important Caveat

Section H ends with an important explanation:

“However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal or state anti-discrimination laws.”



[UC Policy on Sexual Harassment](#) (46k PDF), Section H



Home

Back Next

Close

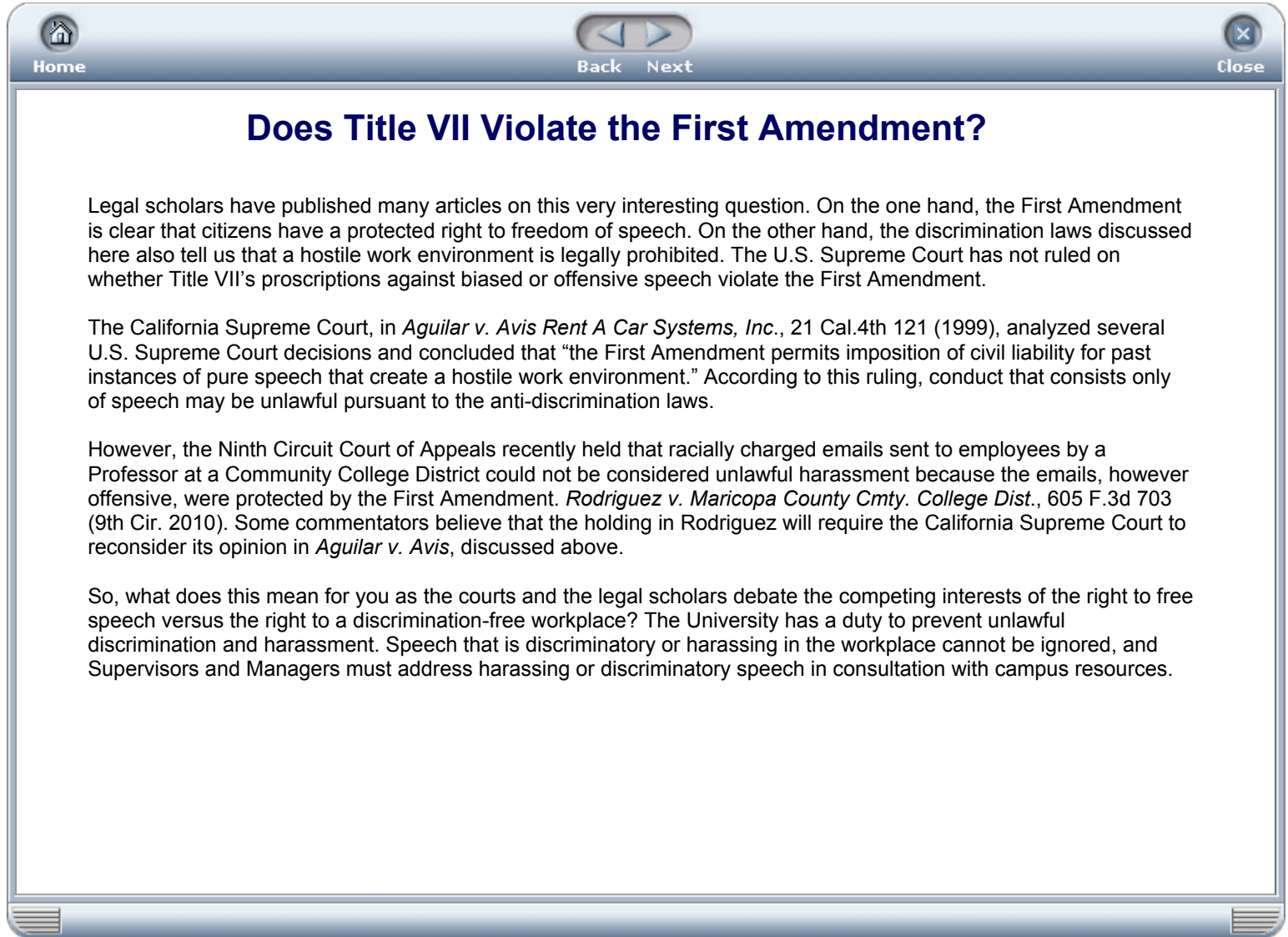
When is Speech Not Protected?

Government restrictions on speech are disfavored, particularly those that aim to punish the speaker based on the content of his or her speech (as opposed to restrictions concerning the time, place and manner of speech). However, **the right to free speech is not absolute**. For example, speech that is directed to inciting imminent lawless action and is likely to produce such action may be proscribed.

Brandenburg v. Ohio, 395 U.S. 444 (1969)

Speech that is sexual in nature and that is sufficiently pervasive as to create an intimidating, hostile or offensive working or learning environment violates Title VII, FEHA and University policy. Individuals who are disciplined under policies such as the University's sometimes contend that their speech was protected by the federal or state constitution. While the law is not entirely settled in this area, this module will provide some practical guidance as to speech that, in all likelihood, is **not constitutionally protected**.

You have completed approximately 45% of this course.



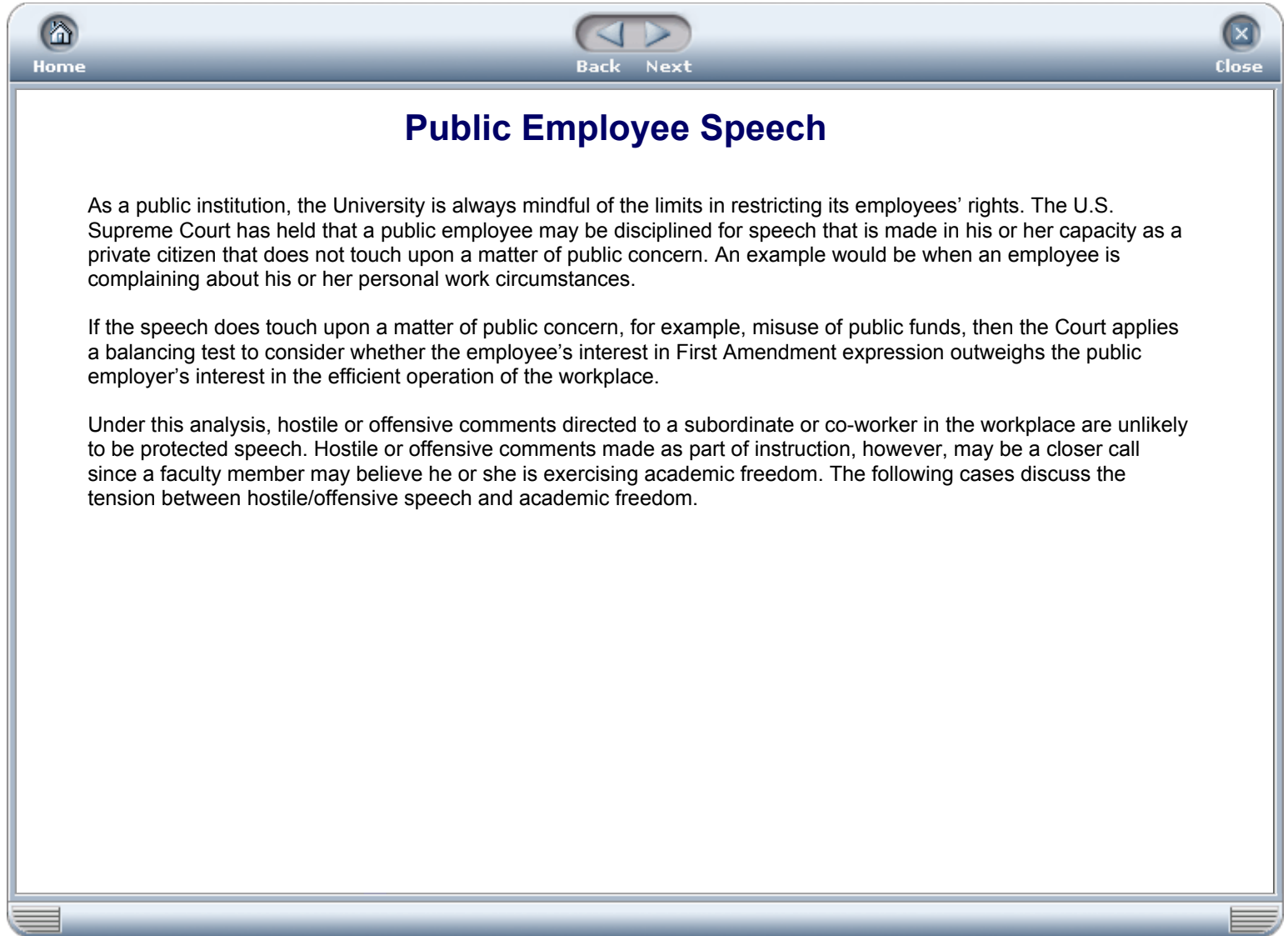
Does Title VII Violate the First Amendment?

Legal scholars have published many articles on this very interesting question. On the one hand, the First Amendment is clear that citizens have a protected right to freedom of speech. On the other hand, the discrimination laws discussed here also tell us that a hostile work environment is legally prohibited. The U.S. Supreme Court has not ruled on whether Title VII's proscriptions against biased or offensive speech violate the First Amendment.

The California Supreme Court, in *Aguilar v. Avis Rent A Car Systems, Inc.*, 21 Cal.4th 121 (1999), analyzed several U.S. Supreme Court decisions and concluded that "the First Amendment permits imposition of civil liability for past instances of pure speech that create a hostile work environment." According to this ruling, conduct that consists only of speech may be unlawful pursuant to the anti-discrimination laws.

However, the Ninth Circuit Court of Appeals recently held that racially charged emails sent to employees by a Professor at a Community College District could not be considered unlawful harassment because the emails, however offensive, were protected by the First Amendment. *Rodriguez v. Maricopa County Cmty. College Dist.*, 605 F.3d 703 (9th Cir. 2010). Some commentators believe that the holding in Rodriguez will require the California Supreme Court to reconsider its opinion in *Aguilar v. Avis*, discussed above.

So, what does this mean for you as the courts and the legal scholars debate the competing interests of the right to free speech versus the right to a discrimination-free workplace? The University has a duty to prevent unlawful discrimination and harassment. Speech that is discriminatory or harassing in the workplace cannot be ignored, and Supervisors and Managers must address harassing or discriminatory speech in consultation with campus resources.



Public Employee Speech

As a public institution, the University is always mindful of the limits in restricting its employees' rights. The U.S. Supreme Court has held that a public employee may be disciplined for speech that is made in his or her capacity as a private citizen that does not touch upon a matter of public concern. An example would be when an employee is complaining about his or her personal work circumstances.

If the speech does touch upon a matter of public concern, for example, misuse of public funds, then the Court applies a balancing test to consider whether the employee's interest in First Amendment expression outweighs the public employer's interest in the efficient operation of the workplace.

Under this analysis, hostile or offensive comments directed to a subordinate or co-worker in the workplace are unlikely to be protected speech. Hostile or offensive comments made as part of instruction, however, may be a closer call since a faculty member may believe he or she is exercising academic freedom. The following cases discuss the tension between hostile/offensive speech and academic freedom.


Home Back Next Close

Key Case: Piggee v. Carl Sandburg College (2006)

Martha L. Piggee was a cosmetology instructor at Carl Sandburg College. After learning that one of her students was gay, she placed in his smock two religious pamphlets discussing the “sinfulness of homosexuality.”

The College investigated the matter and determined that Ms. Piggee had violated the College’s sexual harassment policy. The College directed Ms. Piggee to cease and desist this behavior. It also non-renewed her teaching contract after the semester ended.

In *Piggee v. Carl Sandburg College (2006)* the Court held:



“Even though the sexual harassment policy may not have been a perfect fit for the behavior at issue here, the responsible college officials were not unreasonable when they told Piggee that her actions had a harassing effect on [the student] and that this fell within the ambit of their anti-harassment policy. Under the facts before us here, we conclude that the college’s policy was not an unconstitutional [restriction of speech].”

The Court also held:

“Piggee’s ‘speech,’ both verbal and through the pamphlets she put in [the student’s] pocket, was not related to her job of instructing students in cosmetology. Indeed, if it did anything, it inhibited her ability to perform that job by undermining her relationship with [the student] and other students who disagreed with or were offended by her expressions of her beliefs.”

Piggee v. Carl Sandburg College, 464 F. 3d 667 (7th Cir. 2006)



Home



Back Next



Close

Key Case: Hardy v. Jefferson Community College (2001)

Kenneth Hardy taught Introduction to Interpersonal Communications at Jefferson Community College. As part of a lecture on language and social constructivism, he discussed the use of language to marginalize minorities and other oppressed groups. Mr. Hardy solicited from his students examples of terms that have this effect. Students responded with a number of terms, including words traditionally used to denigrate African-Americans and women.

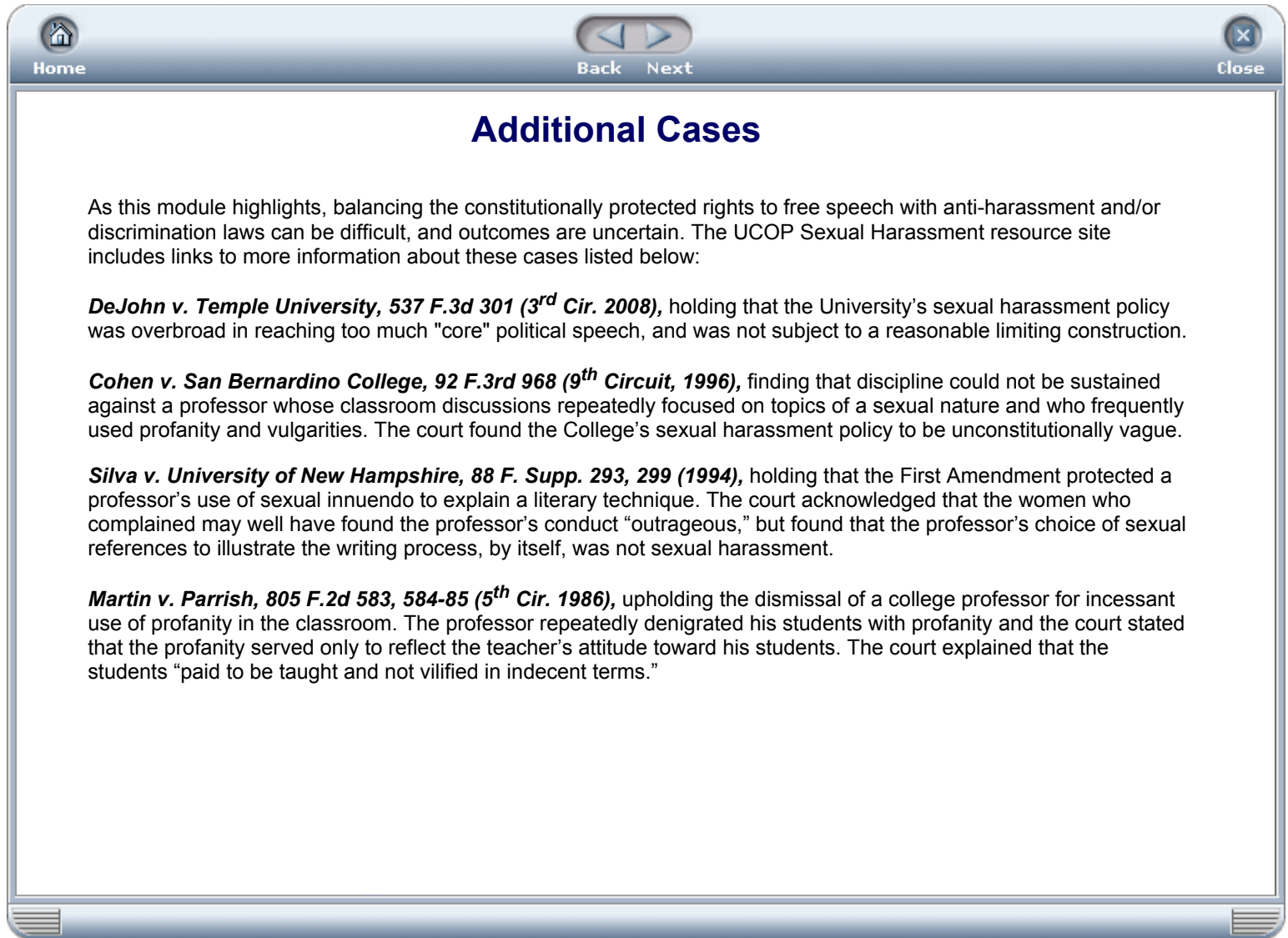
One African-American student objected to the use of these terms in class, and the College did not re-hire Mr. Hardy to teach after the semester ended.

In this case, the court found the discussion related to **a matter of public concern**. The Court further held:



“The alleged circumstances surrounding Hardy’s termination appear to present a classic illustration of ‘undifferentiated fear’ of disturbance on the part of the College’s academic administrators. Only after [a community member] voiced his opposition to the classroom discussion did [the administrators] become interested in the subject matter of Hardy’s lecture . . . [the administrators] were concerned with ‘avoiding the discomfort and unpleasantness that always accompany’ a controversial subject. **On balance, Hardy’s right to free speech and academic freedom outweigh the College’s interest in limiting that speech.**”

Hardy v. Jefferson Community College, 260 F.3d 671 (6th Cir. 2001)



Additional Cases

As this module highlights, balancing the constitutionally protected rights to free speech with anti-harassment and/or discrimination laws can be difficult, and outcomes are uncertain. The UCOP Sexual Harassment resource site includes links to more information about these cases listed below:

DeJohn v. Temple University, 537 F.3d 301 (3rd Cir. 2008), holding that the University's sexual harassment policy was overbroad in reaching too much "core" political speech, and was not subject to a reasonable limiting construction.

Cohen v. San Bernardino College, 92 F.3d 968 (9th Circuit, 1996), finding that discipline could not be sustained against a professor whose classroom discussions repeatedly focused on topics of a sexual nature and who frequently used profanity and vulgarities. The court found the College's sexual harassment policy to be unconstitutionally vague.


Silva v. University of New Hampshire, 88 F. Supp. 293, 299 (1994), holding that the First Amendment protected a professor's use of sexual innuendo to explain a literary technique. The court acknowledged that the women who complained may well have found the professor's conduct "outrageous," but found that the professor's choice of sexual references to illustrate the writing process, by itself, was not sexual harassment.

Martin v. Parrish, 805 F.2d 583, 584-85 (5th Cir. 1986), upholding the dismissal of a college professor for incessant use of profanity in the classroom. The professor repeatedly denigrated his students with profanity and the court stated that the profanity served only to reflect the teacher's attitude toward his students. The court explained that the students "paid to be taught and not vilified in indecent terms."

HomeBack NextClose

Case Study: Professor Drama

In a University Theater class, Professor Drama's required reading list includes excerpts from scripts that contain descriptions of explicit sexual conduct, including scenes that depict women in submissive and demeaning roles. The professor also assigns students to write their own materials, which are read in class. Some of the student essays contain sexually derogatory themes about women. Several female students complain that the materials and related classroom discussions have created a sexually hostile environment for women in the class.*



**This scenario is adapted from the Office for Civil Rights "Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties."*

May the professor be disciplined for creating a hostile environment?

Yes


No

Home Back Next Close

Case Study: Professor Drama

In a University Theater class, Professor Drama's required reading list includes excerpts from scripts that contain descriptions of explicit sexual conduct, including scenes that depict women in submissive and demeaning roles. The professor also assigns students to write their own materials, which are read in class. Some of the student essays contain sexually derogatory themes about women. Several female students complain that the materials and related classroom discussions have created a sexually hostile environment for women in the class.*

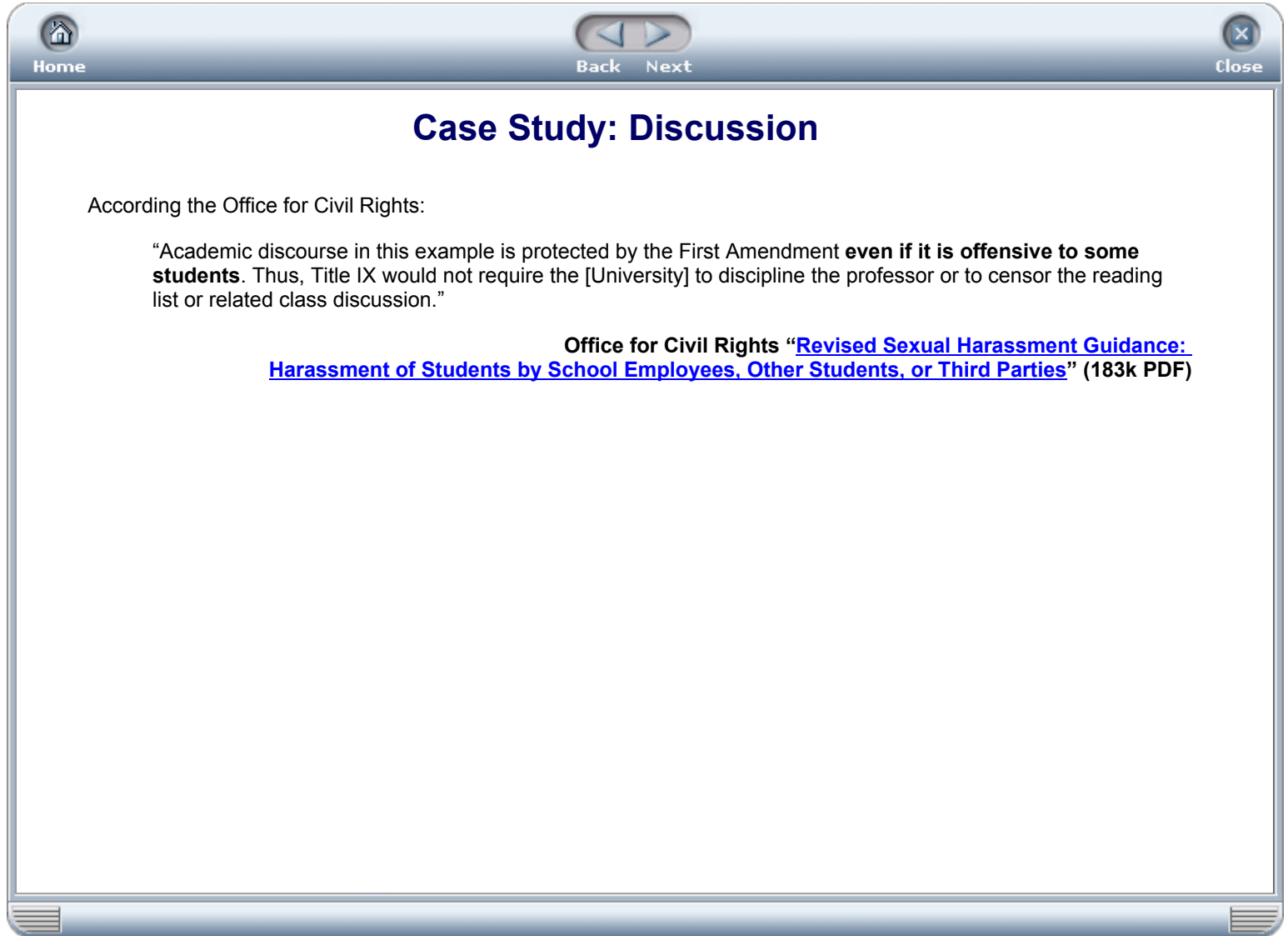
**This scenario is adapted from the Office for Civil Rights "Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties."*



May the professor be disciplined for creating a hostile environment?

Yes **That is CORRECT.**

No **Click the Next button to read a discussion of this case study.**



Home

Back Next

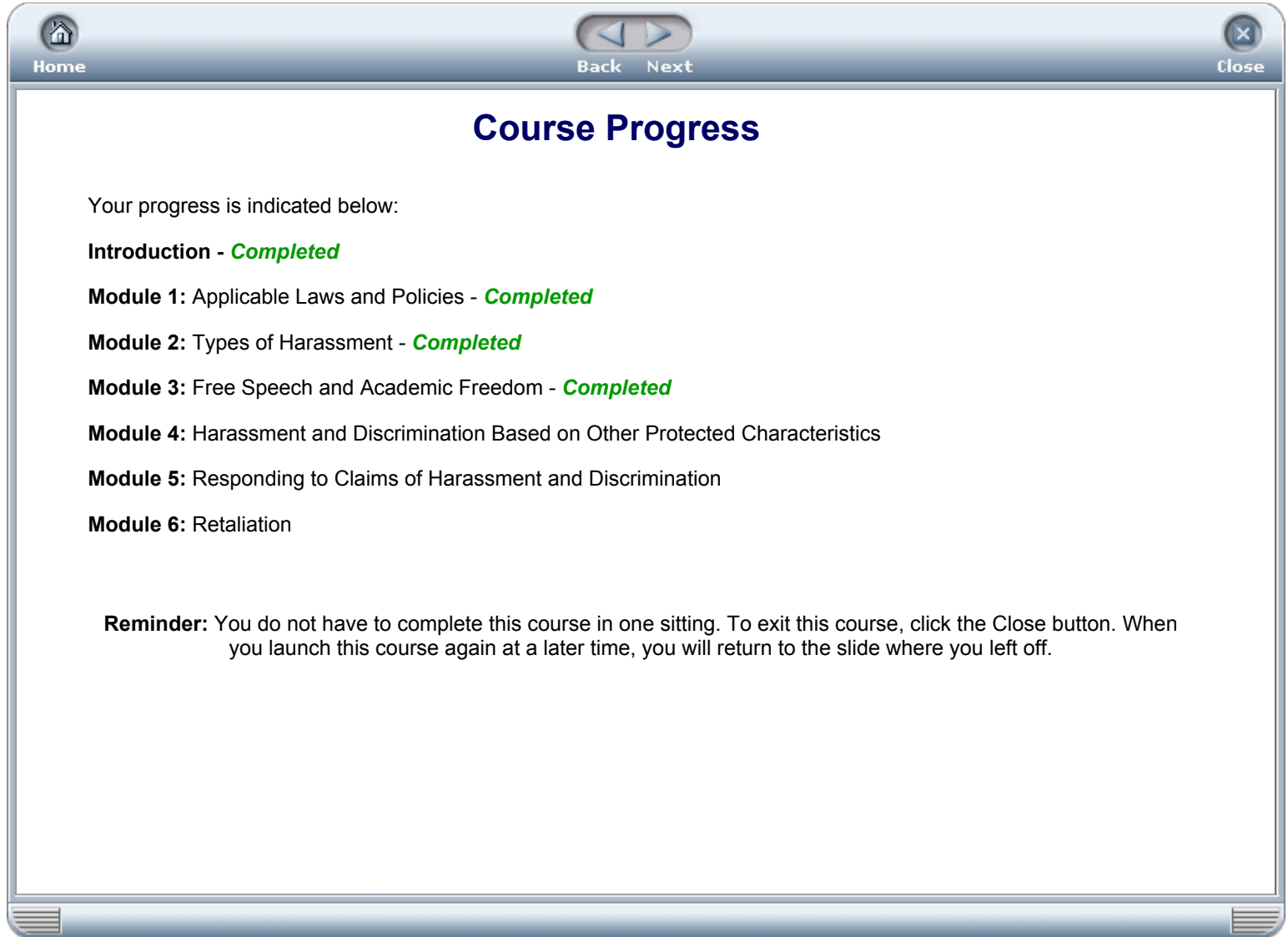
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Case Study: Discussion

According to the Office for Civil Rights:

“Academic discourse in this example is protected by the First Amendment **even if it is offensive to some students**. Thus, Title IX would not require the [University] to discipline the professor or to censor the reading list or related class discussion.”

Office for Civil Rights [“Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties” \(183k PDF\)](#)



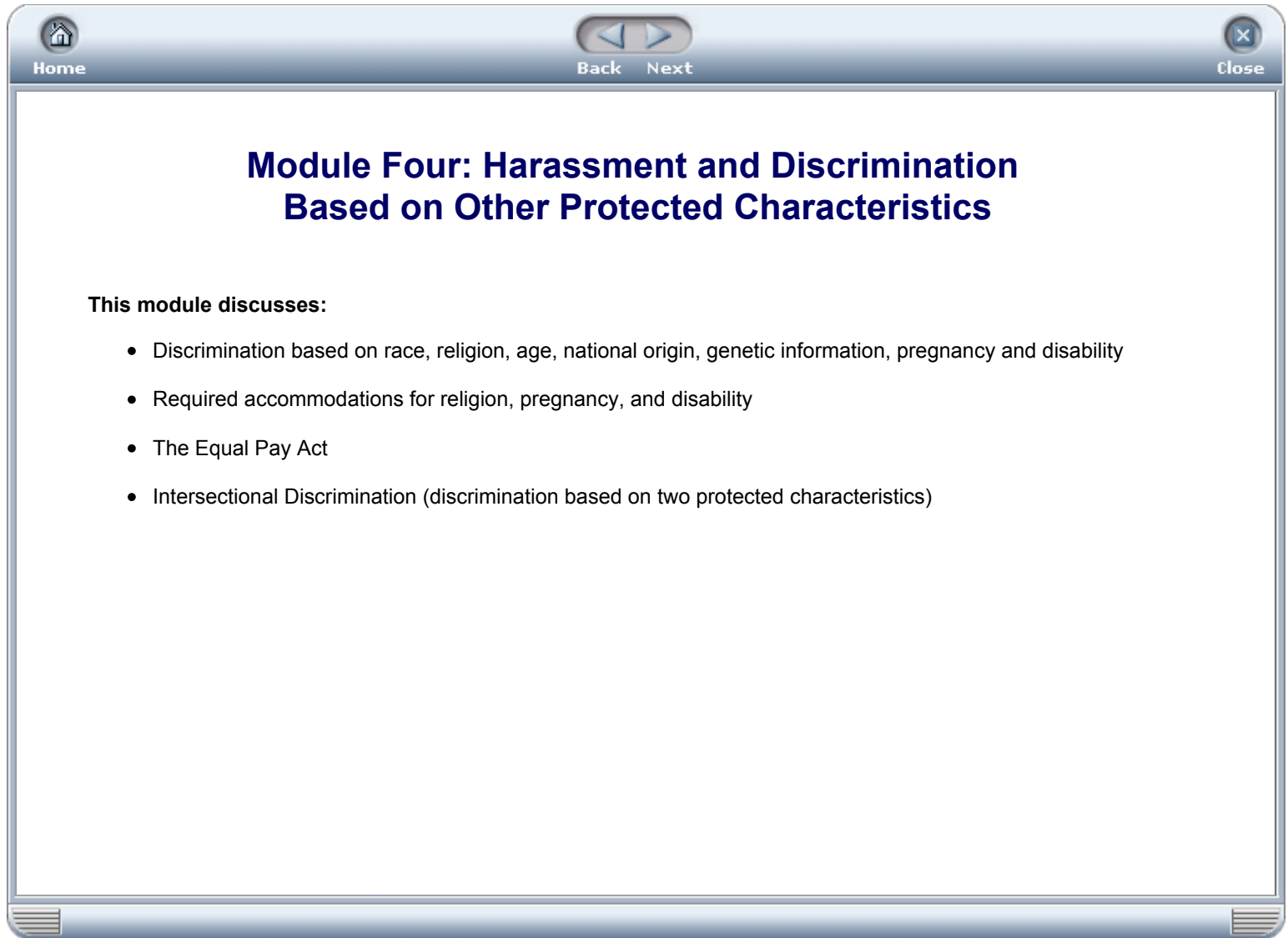
Home Back Next Close

Course Progress

Your progress is indicated below:

- Introduction - **Completed**
- Module 1: Applicable Laws and Policies - **Completed**
- Module 2: Types of Harassment - **Completed**
- Module 3: Free Speech and Academic Freedom - **Completed**
- Module 4: Harassment and Discrimination Based on Other Protected Characteristics
- Module 5: Responding to Claims of Harassment and Discrimination
- Module 6: Retaliation

Reminder: You do not have to complete this course in one sitting. To exit this course, click the Close button. When you launch this course again at a later time, you will return to the slide where you left off.



**Module Four: Harassment and Discrimination
Based on Other Protected Characteristics**

This module discusses:

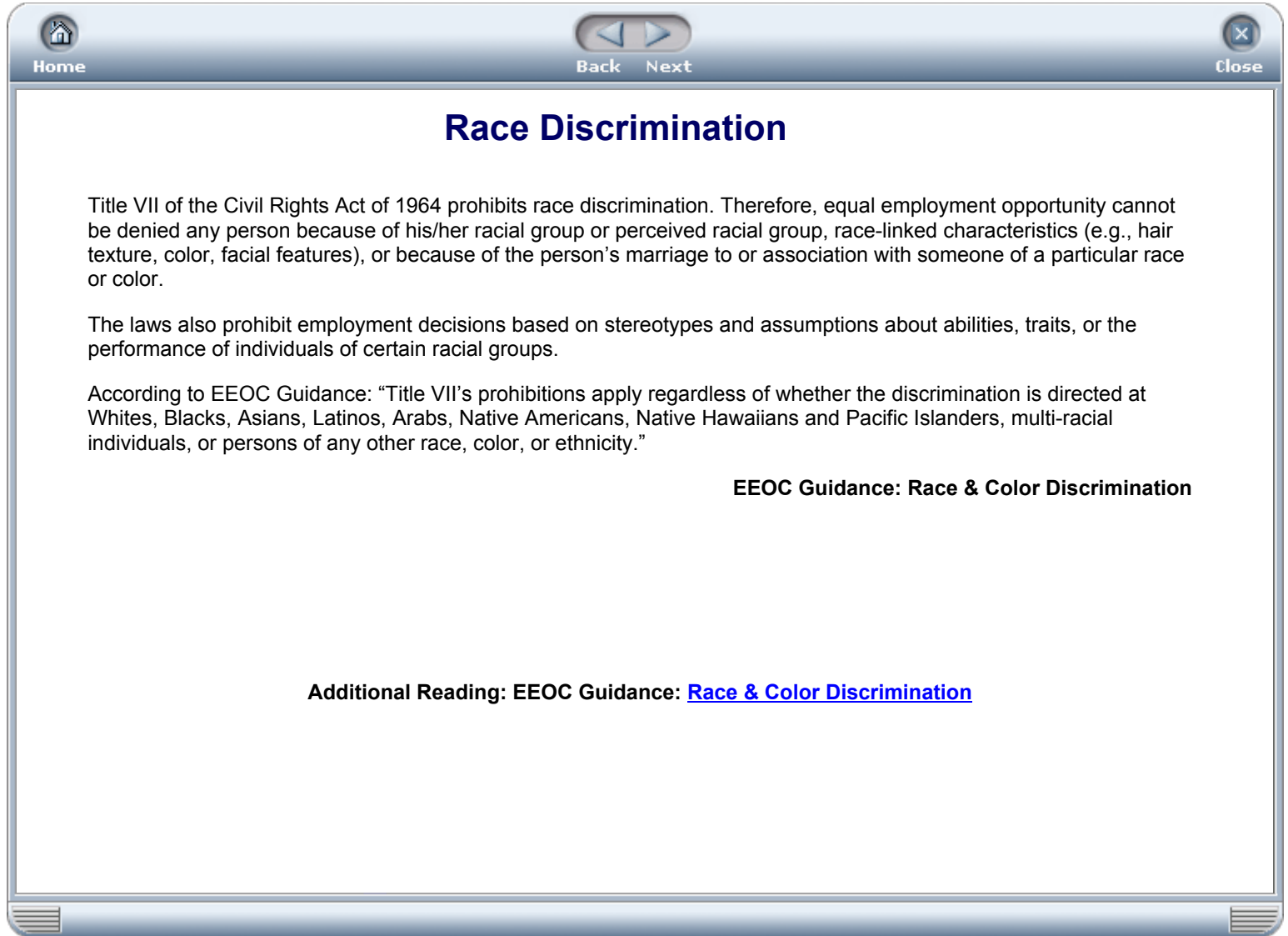
- Discrimination based on race, religion, age, national origin, genetic information, pregnancy and disability
- Required accommodations for religion, pregnancy, and disability
- The Equal Pay Act
- Intersectional Discrimination (discrimination based on two protected characteristics)

Other Types of Unlawful Harassment and Discrimination

This course focuses mainly on harassment and discrimination based on sex; however, many of the principles discussed apply equally to claims of harassment and discrimination based on other protected characteristics, such as race, religion, age or disability. This module discuss a number of issues concerning other types of harassment and discrimination.

Employees will sometimes complain that they are being treated “unfairly.” This may not mean they are being discriminated against, but it should be a wake-up call for the supervisor who should then look closely at whether the employee is receiving the same treatment, and being held to the same standards, as other similarly situated employees.

You have completed approximately 50% of this course.



Race Discrimination

Title VII of the Civil Rights Act of 1964 prohibits race discrimination. Therefore, equal employment opportunity cannot be denied any person because of his/her racial group or perceived racial group, race-linked characteristics (e.g., hair texture, color, facial features), or because of the person's marriage to or association with someone of a particular race or color.

The laws also prohibit employment decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals of certain racial groups.

According to EEOC Guidance: "Title VII's prohibitions apply regardless of whether the discrimination is directed at Whites, Blacks, Asians, Latinos, Arabs, Native Americans, Native Hawaiians and Pacific Islanders, multi-racial individuals, or persons of any other race, color, or ethnicity."

EEOC Guidance: Race & Color Discrimination

Additional Reading: EEOC Guidance: [Race & Color Discrimination](#)


Home Back Next Close

Key Case: *El-Hakem v. BJY, Inc.* (2005)

In *El-Hakem v. BJY, Inc.* (2005), Mamdouh El-Hakem, a man of Arab heritage, sued his employer for race discrimination. The chief executive officer of the company had insisted that Mr. El-Hakem use the name “Manny” instead of his given name, “Mamdouh.” The CEO stated that a Western name would increase Mr. El-Hakem’s chances of success and would be more acceptable to the company’s clientele.

The court held that even though the name “Manny” is not a racial epithet, actionable race discrimination need not be based on physical or genetically determined characteristics such as skin color: “Names are often a proxy for race and ethnicity.”

***El-Hakem v. BJY, Inc.*, 415 F.3d 1068 (9th Cir. 2005)**




Home Back Next Close

Key Case: Thomas v. Eastman Kodak (1999)

Myrtle Thomas was the only African-American customer service representative in the office. She was rated as a “superior” employee for 10 years. At that point, she was assigned to a new supervisor, Claire Flannery, who was Caucasian. Ms. Thomas’ evaluation scores then began to decline. Ms. Thomas alleged that Ms. Flannery treated her differently than her Caucasian colleagues. For example, she alleged that Ms. Flannery did not travel with Ms. Thomas as she did with other customer service representatives and therefore could not accurately evaluate Ms. Thomas’ interaction with customers.

Ms. Thomas also alleged that Ms. Flannery did not give her the same developmental opportunities as others and discouraged her from applying for a management position. Eventually Ms. Thomas was laid off. Ms. Thomas contended that the layoff was discriminatory because it resulted from a ranking process that relied on racially biased performance appraisals.



The Court held that Ms. Thomas presented enough evidence of racial animus to go to trial even though she did not allege that Ms. Flannery had made any discriminatory comments. The Court noted that **unlawful discrimination can stem from stereotypes and other types of cognitive biases, as well as from conscious animus**. The Court also noted the tendency of “unique” employees to be evaluated more harshly in a subjective evaluation process.

Thomas v. Eastman Kodak, 183 F.3d 38 (1st Cir. 1999)

Religious Discrimination and Accommodation

Title VII of the Civil Rights Act of 1964 also prohibits religious discrimination. Employers may not treat employees or applicants more or less favorably because of their religious beliefs or practices - except to the extent that a religious accommodation is warranted.

Employees cannot be forced to participate -- or not participate -- in a **religious activity as a condition of employment**.

Employers must **reasonably accommodate employees' sincerely held religious practices** unless doing so would impose an undue hardship on the employer.

Employers must permit employees to engage in **religious expression**, unless the religious expression would impose an undue hardship on the employer. Generally, an employer may not place more restrictions on religious expression than on other forms of expression that have a comparable effect on workplace efficiency.

Additional Reading:
EEOC Compliance Manual: [Religious Discrimination](#)

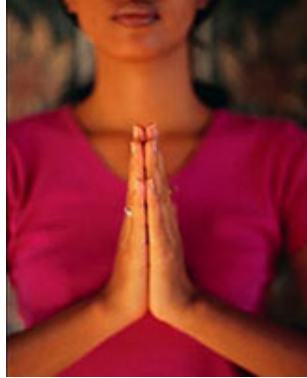
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HomeBack NextClose

Case Study: Susan Stacks

Susan Stacks is a Librarian. Ms. Stacks generally works from 8:00 a.m. to 5:00 p.m., Monday through Friday. Typically, she takes a one-hour lunch period from noon to 1:00 p.m. However, Ms. Stacks has requested that she be allowed to take off two hours for lunch on Fridays so she may attend Friday prayer. (Ms. Stacks is a Muslim.) Ms. Shelf said she would be willing to come in an hour early on Fridays to make up the time. She also requests permission to use a small and currently unoccupied office on one of the upper floors for her private prayer time.

As the Head Librarian and Ms. Stacks' Supervisor, how should you respond to her request:




- Deny the request, otherwise everyone will start asking for a longer lunch on Fridays.
- Consider the request for time off, but not the use of the empty room.
- Consider both requests.

Home Back Next Close

Case Study: Susan Stacks

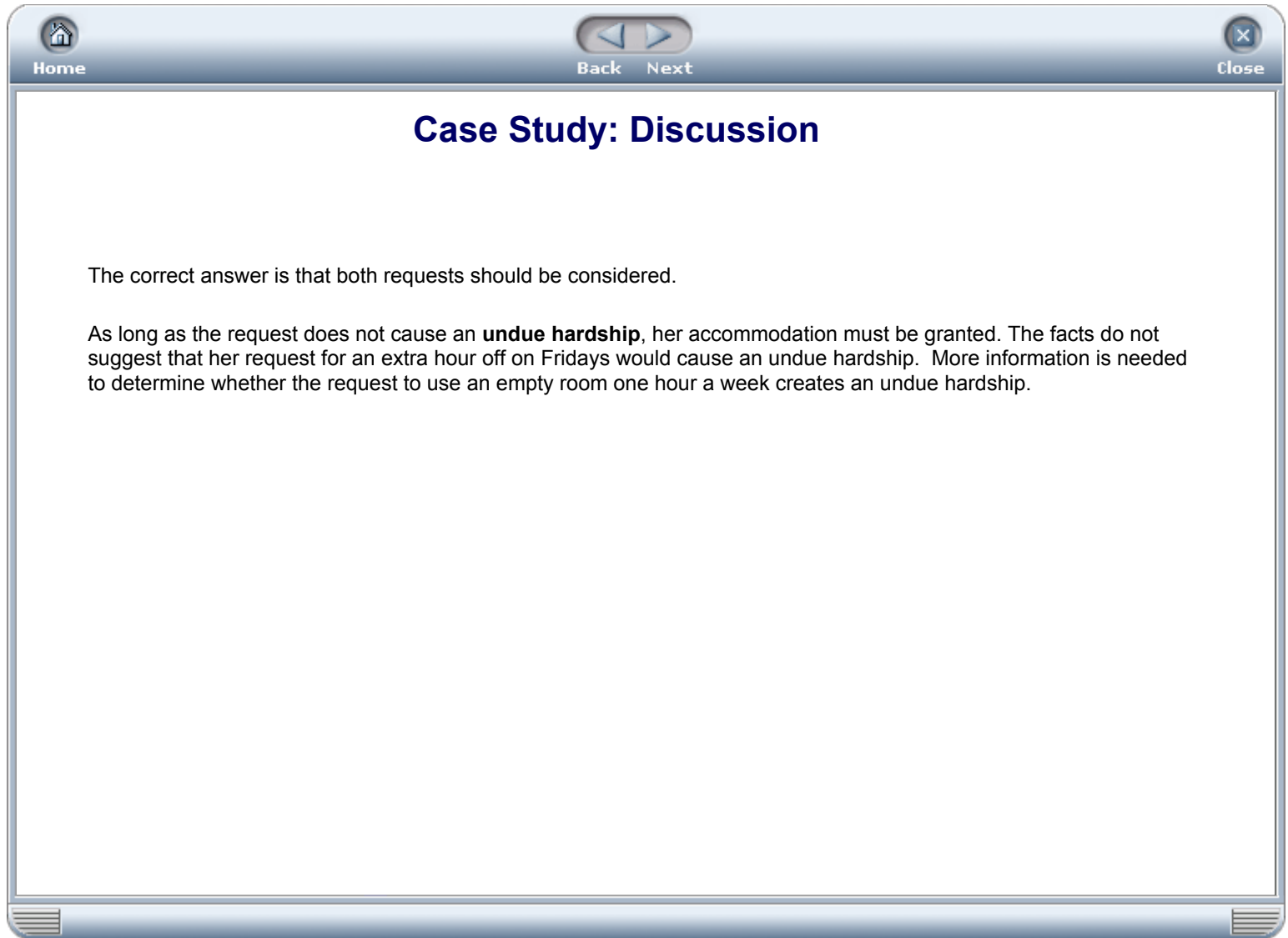
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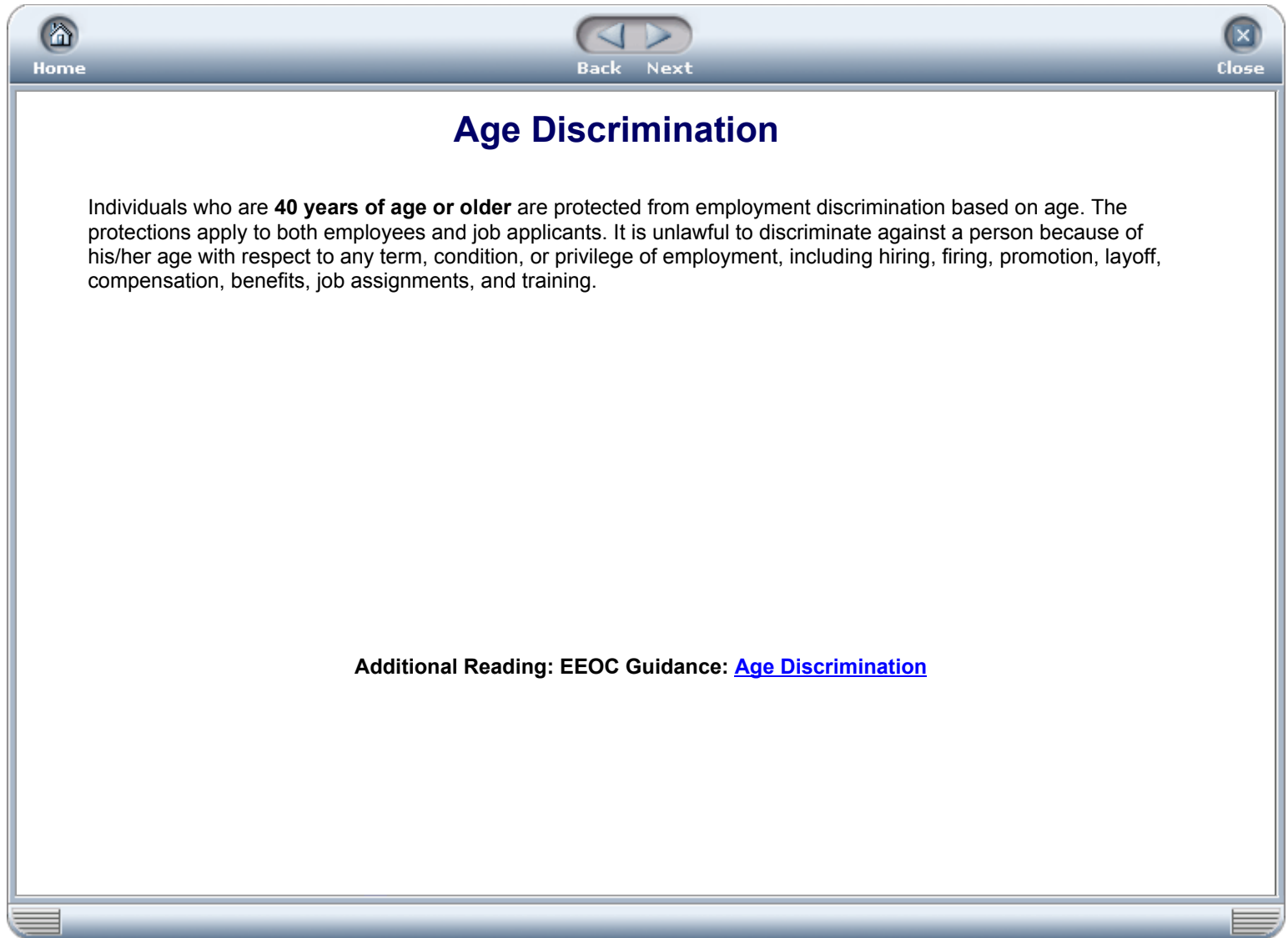
That is CORRECT.
Click the Next button to read a discussion of this case study.



Case Study: Discussion

The correct answer is that both requests should be considered.

As long as the request does not cause an **undue hardship**, her accommodation must be granted. The facts do not suggest that her request for an extra hour off on Fridays would cause an undue hardship. More information is needed to determine whether the request to use an empty room one hour a week creates an undue hardship.



Age Discrimination


Individuals who are **40 years of age or older** are protected from employment discrimination based on age. The protections apply to both employees and job applicants. It is unlawful to discriminate against a person because of his/her age with respect to any term, condition, or privilege of employment, including hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training.

Additional Reading: EEOC Guidance: [Age Discrimination](#)

Home Back Next Close

Case Study: Adam Polymer

The Department of Chemistry is considering a number of applicants for an Assistant Professor position. One of the members of the search committee, Professor Quantum, opines during a meeting of the committee that Adam Polymer's application is not as favorable as the others in that Mr. Polymer will not have as much time to develop and pursue his research agenda. The committee is aware of Mr. Polymer's age (46) because he is an acquaintance of Professor Quantum.



As the chair of the department, how should you respond to Professor Quantum's statement?


- You should ignore it. As long as it does not form the basis of a hiring decision, his comment is harmless.
- You should remove Professor Quantum from the search committee and have him recuse himself from any decisions involving this appointment.
- You should tell the search committee that Professor Quantum's comment is inappropriate and that the committee should not consider Mr. Polymer's age in making recommendations regarding the search.

Submit

Home Back Next Close

Case Study: Adam Polymer

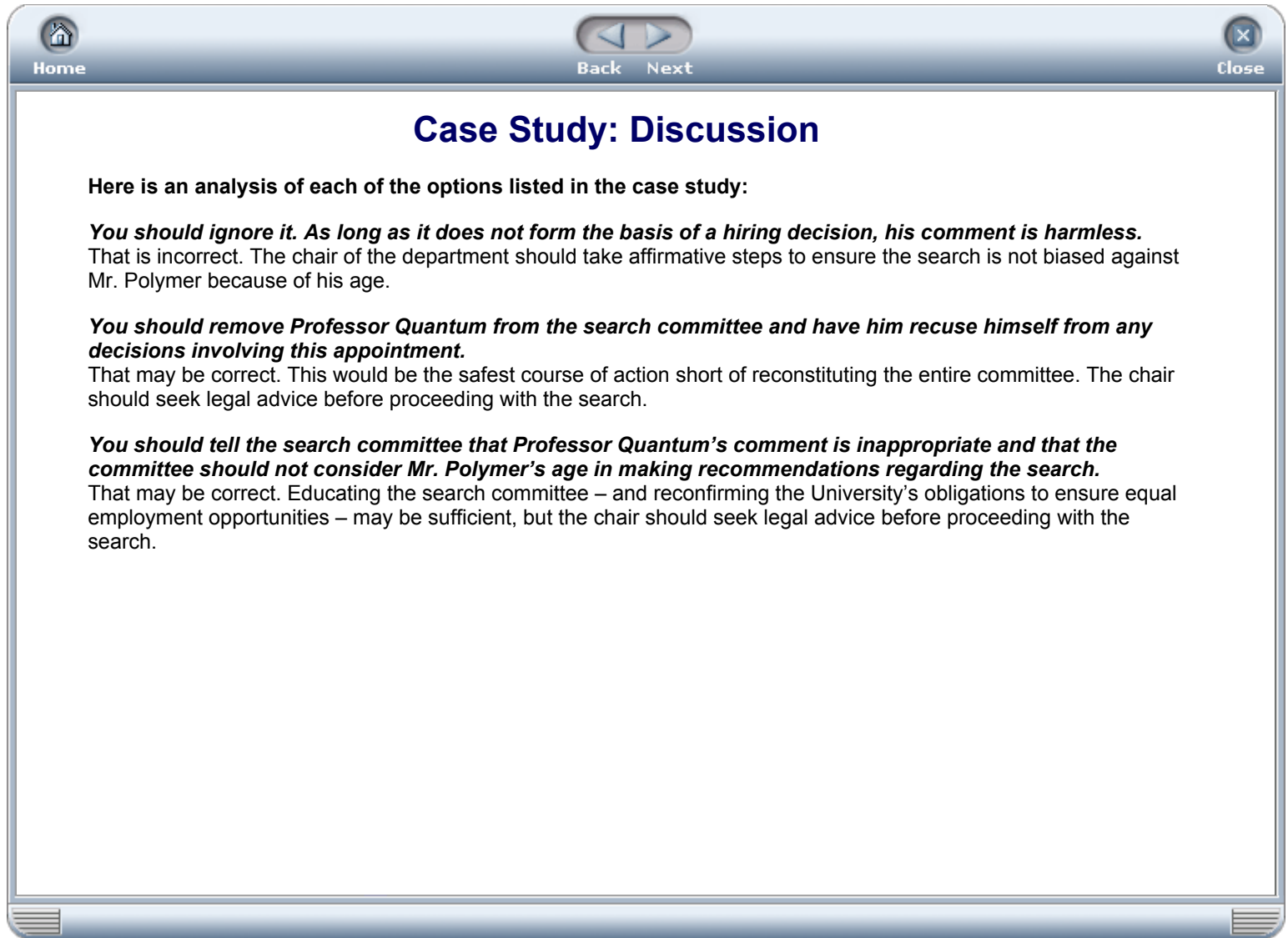
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As the chair of the department, how should you respond to Professor Quantum's statement?

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- You should tell the search committee that Professor Quantum's comment is inappropriate and that the committee should not consider Mr. Polymer's age in making recommendations regarding the search.

That MAY BE CORRECT.
Click the Next button to read a discussion of this case study.



Home **Back** **Next** **Close**

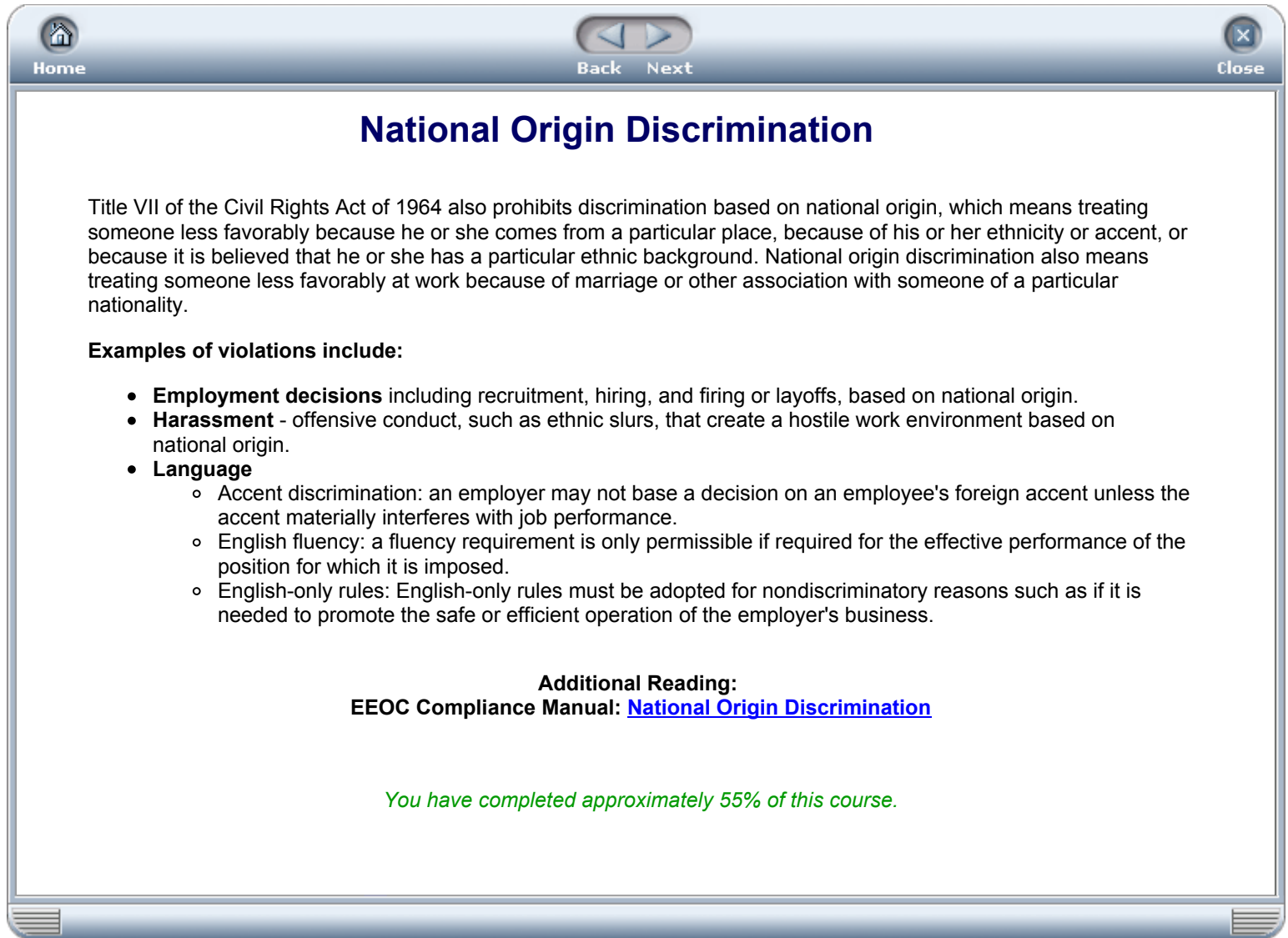
Case Study: Discussion

Here is an analysis of each of the options listed in the case study:

You should ignore it. As long as it does not form the basis of a hiring decision, his comment is harmless.
That is incorrect. The chair of the department should take affirmative steps to ensure the search is not biased against Mr. Polymer because of his age.

You should remove Professor Quantum from the search committee and have him recuse himself from any decisions involving this appointment.
That may be correct. This would be the safest course of action short of reconstituting the entire committee. The chair should seek legal advice before proceeding with the search.

You should tell the search committee that Professor Quantum's comment is inappropriate and that the committee should not consider Mr. Polymer's age in making recommendations regarding the search.
That may be correct. Educating the search committee – and reconfirming the University's obligations to ensure equal employment opportunities – may be sufficient, but the chair should seek legal advice before proceeding with the search.



Home **Back** **Next** **Close**

National Origin Discrimination

Title VII of the Civil Rights Act of 1964 also prohibits discrimination based on national origin, which means treating someone less favorably because he or she comes from a particular place, because of his or her ethnicity or accent, or because it is believed that he or she has a particular ethnic background. National origin discrimination also means treating someone less favorably at work because of marriage or other association with someone of a particular nationality.

Examples of violations include:

- **Employment decisions** including recruitment, hiring, and firing or layoffs, based on national origin.
- **Harassment** - offensive conduct, such as ethnic slurs, that create a hostile work environment based on national origin.
- **Language**
 - Accent discrimination: an employer may not base a decision on an employee's foreign accent unless the accent materially interferes with job performance.
 - English fluency: a fluency requirement is only permissible if required for the effective performance of the position for which it is imposed.
 - English-only rules: English-only rules must be adopted for nondiscriminatory reasons such as if it is needed to promote the safe or efficient operation of the employer's business.

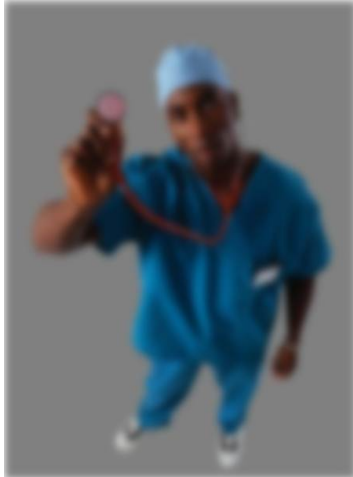
Additional Reading:
EEOC Compliance Manual: [National Origin Discrimination](#)

You have completed approximately 55% of this course.

Home Back Next Close

Case Study: Jima Ziway

The Radiology Department in the Medical Center has a very ethnically diverse staff, including a handful of workers who are of Ethiopian national origin, although that is not something that is well-known in the workplace. Even so, the employees of Ethiopian origin feel that the Department Manager Robert Apple, an African American, tends to subject them to a higher standard of work performance, provides overly harsh scrutiny of their performance, and exacts stricter discipline for similar behaviors that are not addressed with the other employees. One of the employees of Ethiopian origin, Mr. Jima Ziway, complains that Mr. Apple is discriminating against employees of Ethiopian origin.



Do the Ethiopian employees have a claim of national origin discrimination?

Yes

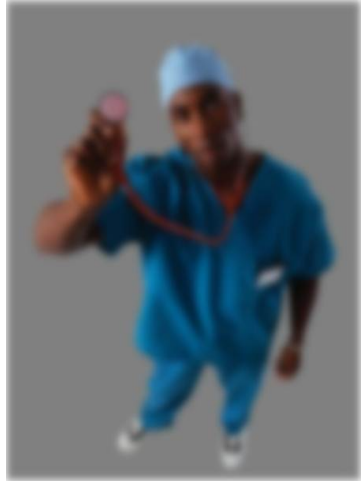
No

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Home Back Next Close

Case Study: Jima Ziway

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Do the Ethiopian employees have a claim of national origin discrimination?

Yes **That is CORRECT.**

No **Click the Next button to read a discussion of this case study.**

Case Study: Discussion

The correct answer is "yes."

The employees who are of Ethiopian descent may have a claim if they can show that the Manager has subjected them to discriminatory treatment because of their national origin. The fact that the Manager is of the same color makes no difference. Managers and Supervisors may not discriminate against an employee because of his or her ethnicity.

Pregnancy Discrimination

An employer cannot refuse to hire a pregnant woman because of her pregnancy, because of a pregnancy-related condition or because of the prejudices of co-workers, clients, or customers. Likewise, an employer may not single out pregnancy-related conditions for special procedures to determine an employee's ability to work.

Pregnancy and Maternity Leave

- Employers are required to provide leaves of up to four months to employees disabled because of pregnancy or childbirth.
- Employers are required to provide reasonable accommodations requested by an employee, with the advice of her health care provider, related to her pregnancy, childbirth, or related medical conditions.
- Pregnant employees must be permitted to work as long as they are able to perform their jobs. If an employee has been absent from work as a result of a pregnancy-related condition and recovers, her employer may not require her to remain on leave until the baby's birth.
- Employers must hold open a job for a pregnancy-related absence the same length of time jobs are held open for employees on sick or disability leave.

Additional Reading: UC Academic Personnel Manual 760:
[Family Accommodations for Childbearing and Childrearing \(145k PDF\)](#)

Home

Back Next


Close

Case Study: Lucy Flowers

Lucy Flowers is an assistant professor in the Department of Neurobiology. Dr. Flowers would like to take two years off to care for her child who is due next month. Many of her colleagues have warned her that taking so much time off during this phase of her career will harm her chances of obtaining tenure. Dr. Flowers has asked you, her chair, for advice.

Should you make a recommendation based on the impact of her choice on her career?

Yes
 No



Submit

Home Back Next Close

Case Study: Lucy Flowers


Lucy Flowers is an assistant professor in the Department of Neurobiology. Dr. Flowers would like to take two years off to care for her child who is due next month. Many of her colleagues have warned her that taking so much time off during this phase of her career will harm her chances of obtaining tenure. Dr. Flowers has asked you, her chair, for advice.

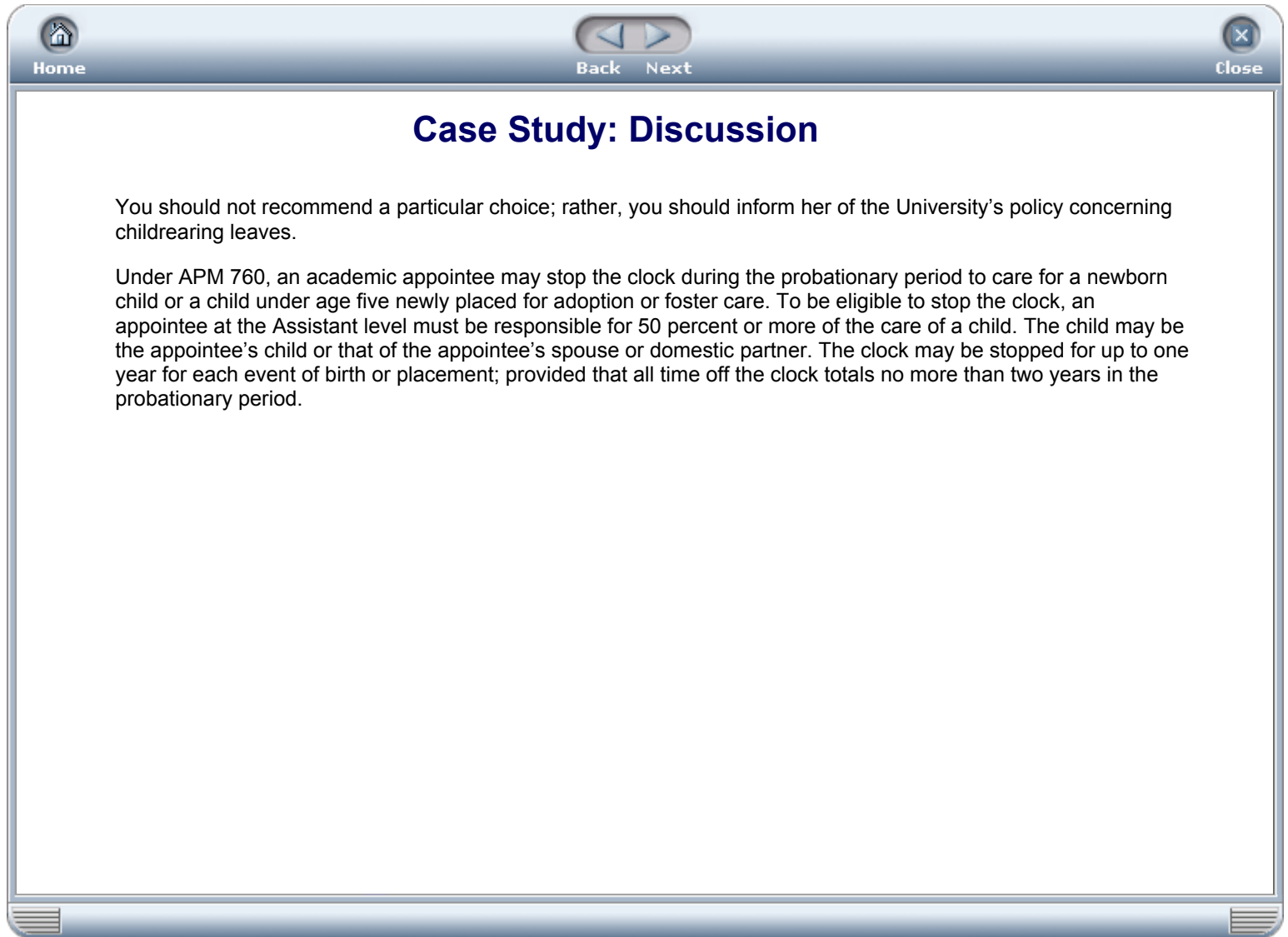
Should you make a recommendation based on the impact of her choice on her career?

Yes

No

That is CORRECT.
Click the Next button to read a discussion of this case study.

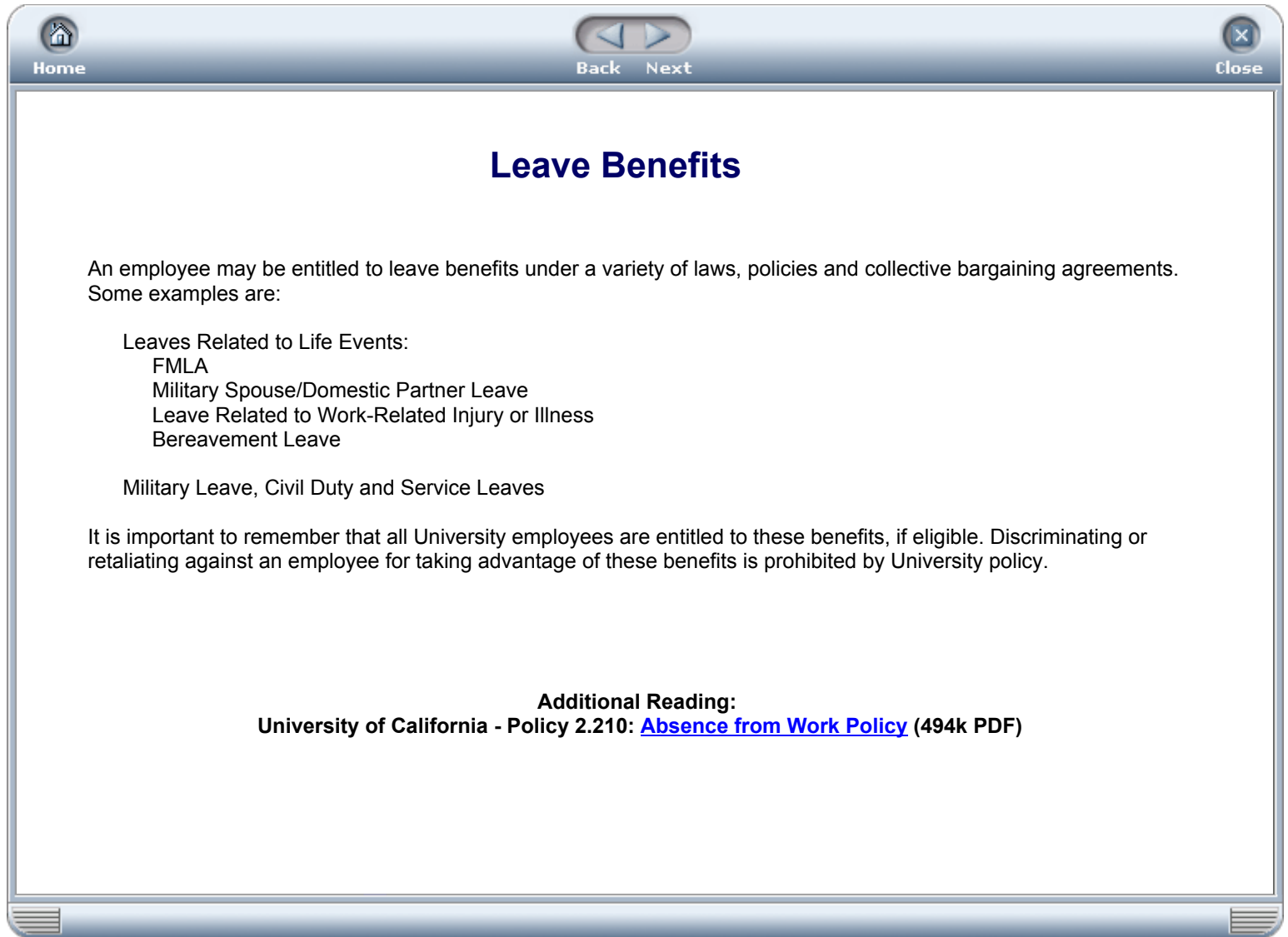




Case Study: Discussion

You should not recommend a particular choice; rather, you should inform her of the University's policy concerning childrearing leaves.

Under APM 760, an academic appointee may stop the clock during the probationary period to care for a newborn child or a child under age five newly placed for adoption or foster care. To be eligible to stop the clock, an appointee at the Assistant level must be responsible for 50 percent or more of the care of a child. The child may be the appointee's child or that of the appointee's spouse or domestic partner. The clock may be stopped for up to one year for each event of birth or placement; provided that all time off the clock totals no more than two years in the probationary period.



Leave Benefits

An employee may be entitled to leave benefits under a variety of laws, policies and collective bargaining agreements. Some examples are:

Leaves Related to Life Events:

- FMLA
- Military Spouse/Domestic Partner Leave
- Leave Related to Work-Related Injury or Illness
- Bereavement Leave

Military Leave, Civil Duty and Service Leaves

It is important to remember that all University employees are entitled to these benefits, if eligible. Discriminating or retaliating against an employee for taking advantage of these benefits is prohibited by University policy.

Additional Reading:
University of California - Policy 2.210: [Absence from Work Policy](#) (494k PDF)



Disability Discrimination and Accommodation

Employers may not discriminate against disabled individuals. In addition, employers have an **affirmative duty to provide reasonable accommodations to qualified employees or applicants with a disability.**

An individual with a disability is a person who:

- Has a physical or mental impairment that limits one or more major life activities (without regard to mitigating measures such as medication, assistive devices, or reasonable accommodations);
- Has a record of such an impairment; or
- Is regarded as having such an impairment.

A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question.

When an employer becomes aware of a request for accommodation, the employer is obligated to initiate the interactive process of accommodation. The employee is obligated to participate in this process in good faith.

Additional Reading: EEOC Guidance: [Disability Discrimination](#)



Home

Back Next

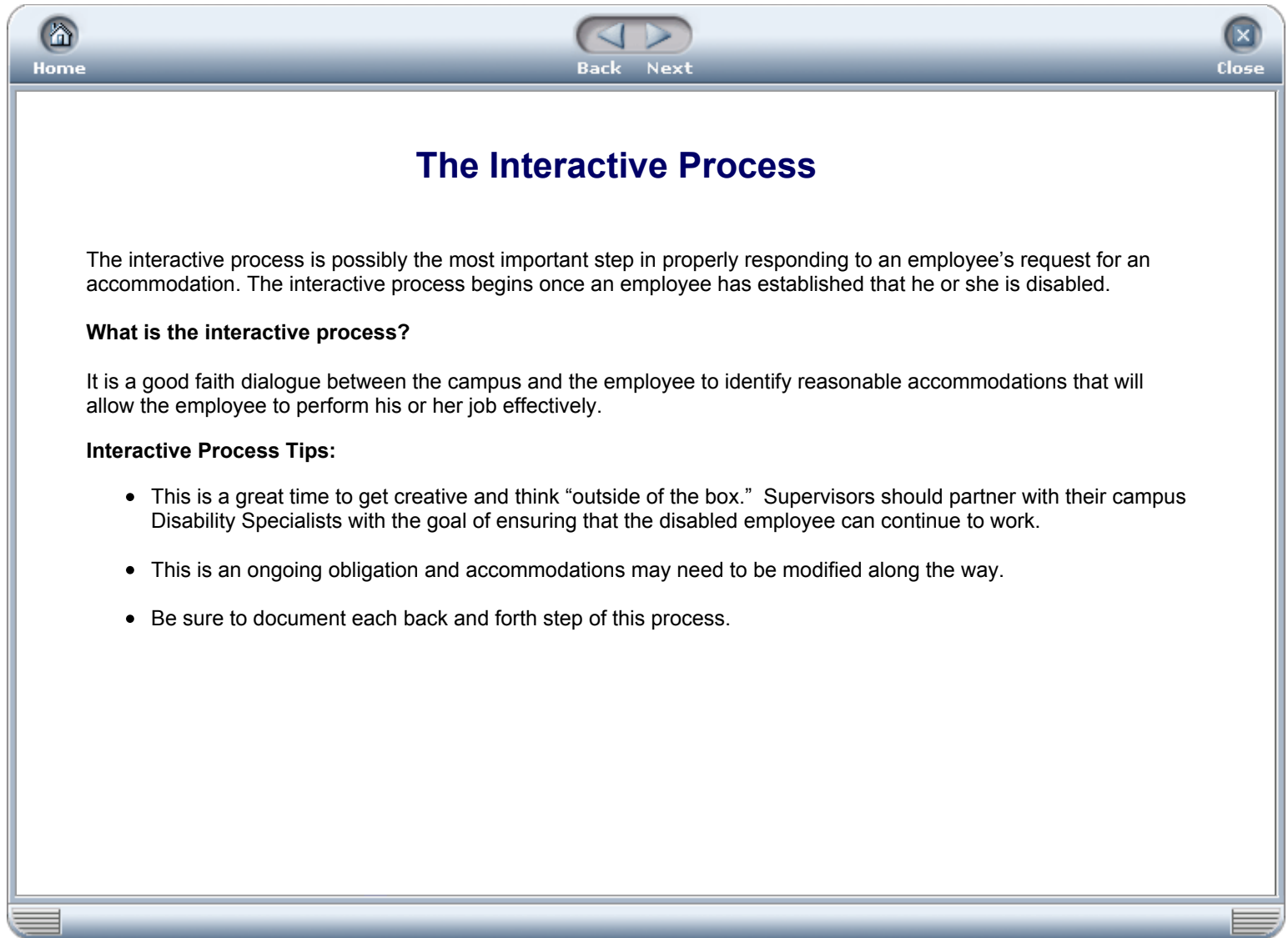
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Reasonable Accommodation for Disability

An employer is required to make a reasonable accommodation for the known disability of a qualified applicant or employee if it would not impose an "undue hardship" on the operation of the employer's business. Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation.

Reasonable accommodation may include, but is not limited to:

- Making existing facilities used by employees readily accessible to and usable by persons with disabilities
- Job restructuring, modifying work schedules, reassignment to a vacant position
- Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters



Home

Back Next

Close

The Interactive Process

The interactive process is possibly the most important step in properly responding to an employee's request for an accommodation. The interactive process begins once an employee has established that he or she is disabled.

What is the interactive process?

It is a good faith dialogue between the campus and the employee to identify reasonable accommodations that will allow the employee to perform his or her job effectively.


Interactive Process Tips:

- This is a great time to get creative and think "outside of the box." Supervisors should partner with their campus Disability Specialists with the goal of ensuring that the disabled employee can continue to work.
- This is an ongoing obligation and accommodations may need to be modified along the way.
- Be sure to document each back and forth step of this process.

HomeBack NextClose

Case Study: Handy Spark

Handy Spark is a facilities staff member. His job requires quite a bit of heavy lifting. He recently informed his supervisor, Cam Socket, that he will be having back surgery in the next few weeks and will not likely be able to lift more than 10 pounds in the future. Mr. Socket is concerned that Mr. Spark will no longer be able to perform all the duties of his job. In addition, Mr. Socket does not feel Mr. Spark is very efficient, although he has always given Mr. Spark satisfactory evaluations. Mr. Socket is thinking this would be a good time for Mr. Spark to transfer to a different job at the University.



Should Mr. Socket encourage Mr. Spark to find another job on campus?


Yes

No

HomeBack NextClose

Case Study: Handy Spark

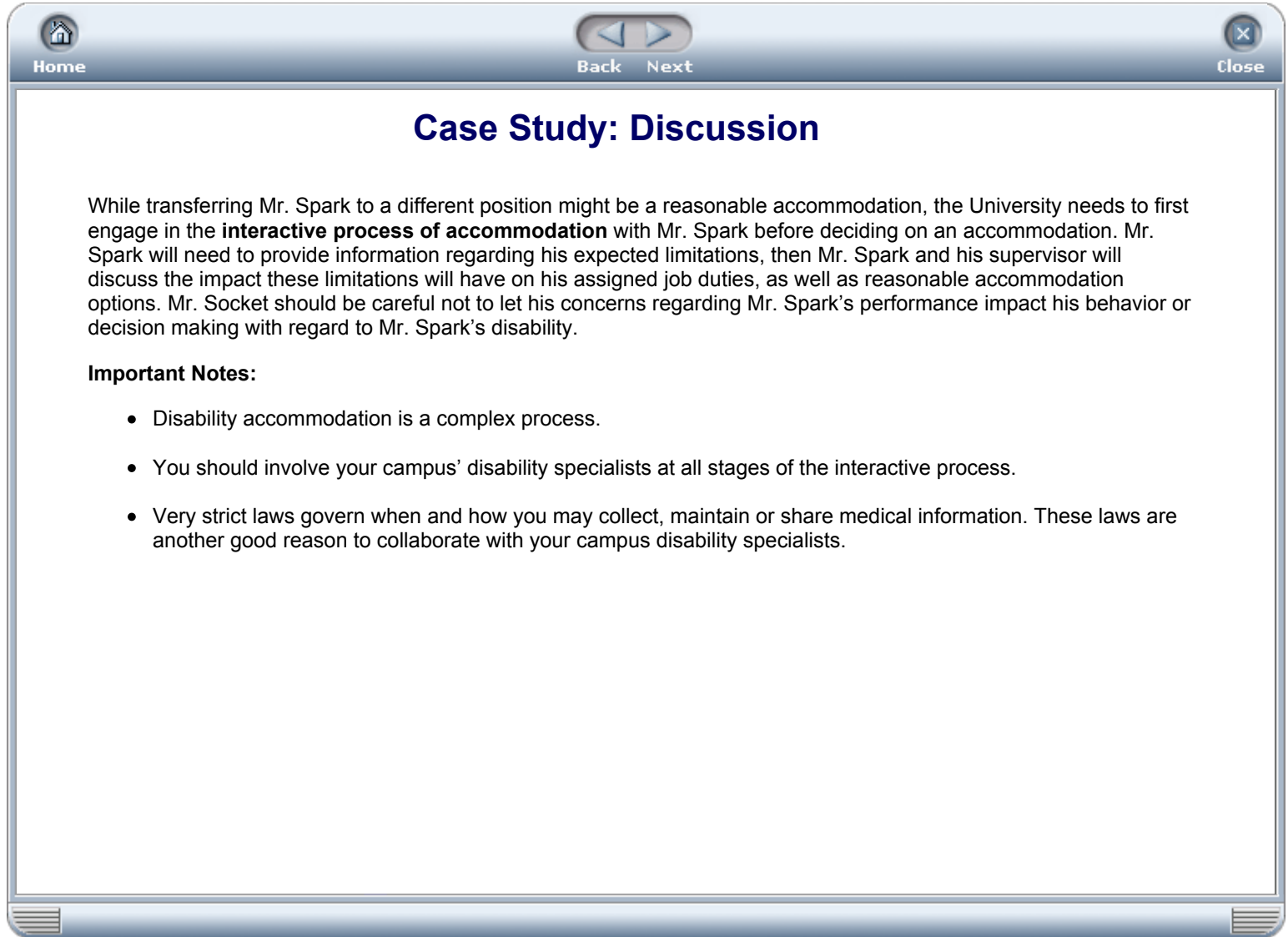
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Should Mr. Socket encourage Mr. Spark to find another job on campus?

Yes **That is CORRECT.**
Click the Next button to read a discussion of this case study.

No






Case Study: Discussion

While transferring Mr. Spark to a different position might be a reasonable accommodation, the University needs to first engage in the **interactive process of accommodation** with Mr. Spark before deciding on an accommodation. Mr. Spark will need to provide information regarding his expected limitations, then Mr. Spark and his supervisor will discuss the impact these limitations will have on his assigned job duties, as well as reasonable accommodation options. Mr. Spark should be careful not to let his concerns regarding Mr. Spark's performance impact his behavior or decision making with regard to Mr. Spark's disability.

Important Notes:

- Disability accommodation is a complex process.
- You should involve your campus' disability specialists at all stages of the interactive process.
- Very strict laws govern when and how you may collect, maintain or share medical information. These laws are another good reason to collaborate with your campus disability specialists.

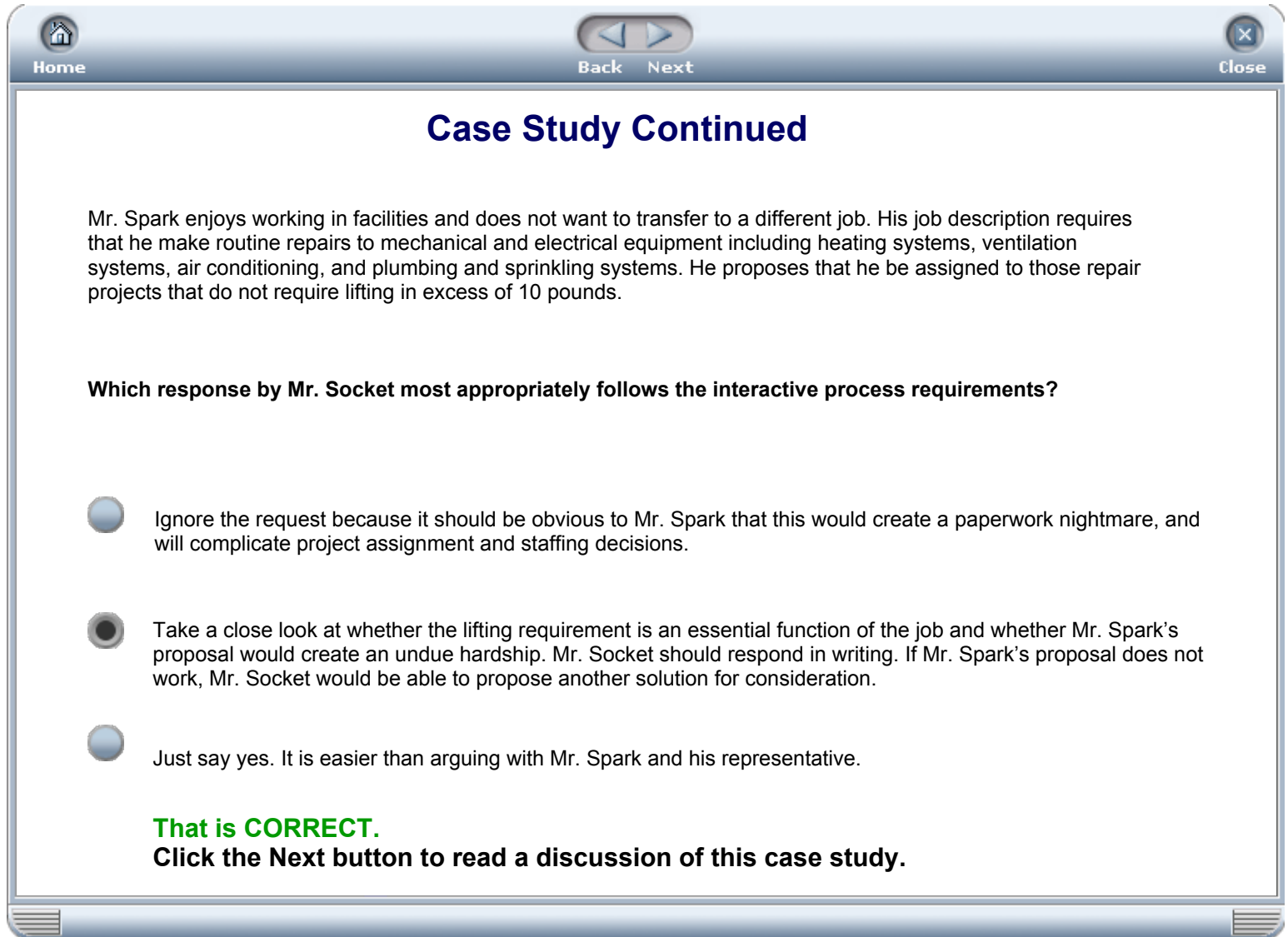
 Home  Back Next  Close

Case Study Continued

Mr. Spark enjoys working in facilities and does not want to transfer to a different job. His job description requires that he make routine repairs to mechanical and electrical equipment including heating systems, ventilation systems, air conditioning, and plumbing and sprinkling systems. He proposes that he be assigned to those repair projects that do not require lifting in excess of 10 pounds.

Which response by Mr. Socket most appropriately follows the interactive process requirements?

- Ignore the request because it should be obvious to Mr. Spark that this would create a paperwork nightmare, and will complicate project assignment and staffing decisions.
- Take a close look at whether the lifting requirement is an essential function of the job and whether Mr. Spark's proposal would create an undue hardship. Mr. Socket should respond in writing. If Mr. Spark's proposal does not work, Mr. Socket would be able to propose another solution for consideration.
- Just say yes. It is easier than arguing with Mr. Spark and his representative.



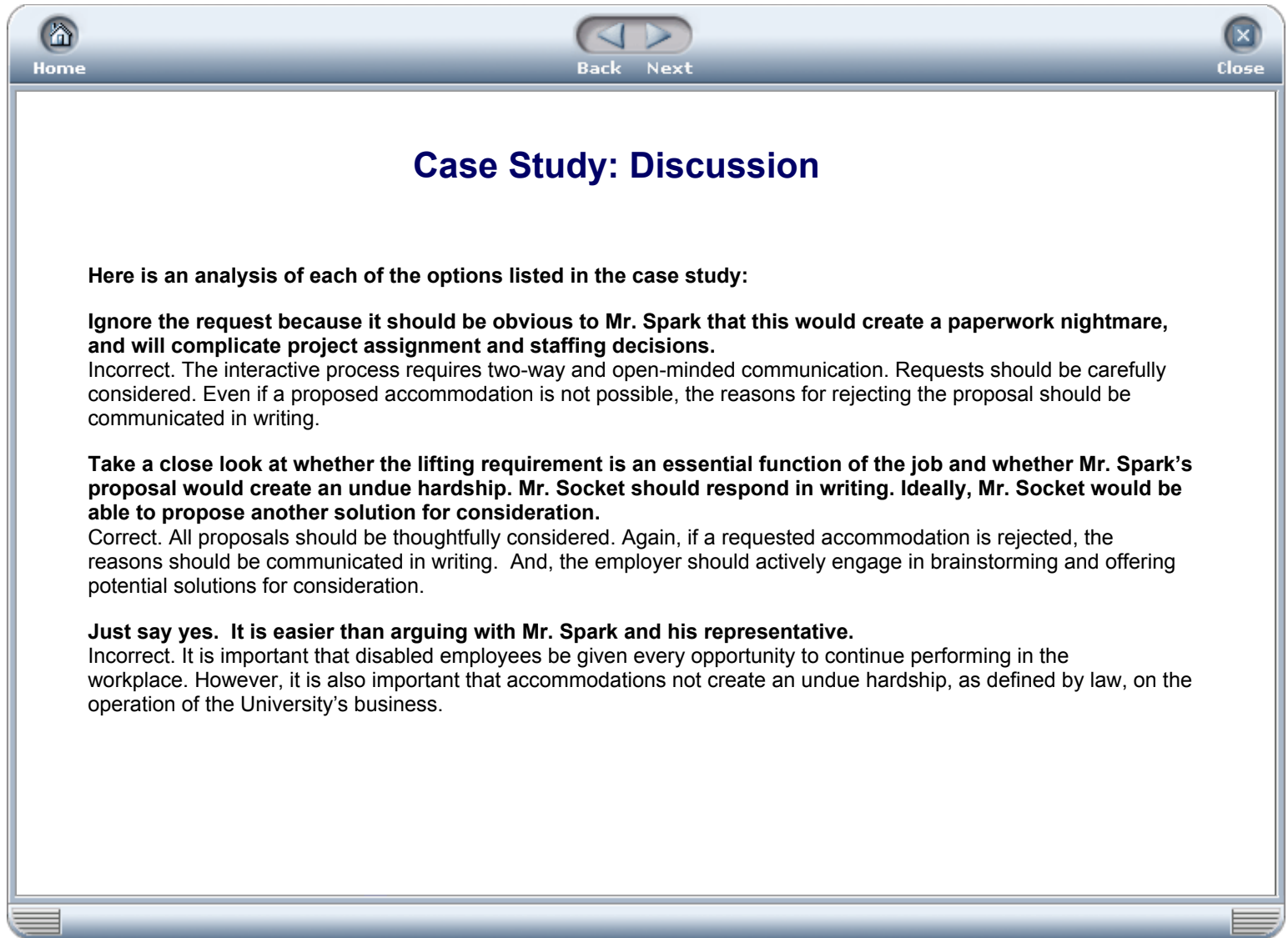
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- Just say yes. It is easier than arguing with Mr. Spark and his representative.

That is CORRECT.
Click the Next button to read a discussion of this case study.



Home **Back** **Next** **Close**

Case Study: Discussion

Here is an analysis of each of the options listed in the case study:

Ignore the request because it should be obvious to Mr. Spark that this would create a paperwork nightmare, and will complicate project assignment and staffing decisions.
Incorrect. The interactive process requires two-way and open-minded communication. Requests should be carefully considered. Even if a proposed accommodation is not possible, the reasons for rejecting the proposal should be communicated in writing.

Take a close look at whether the lifting requirement is an essential function of the job and whether Mr. Spark's proposal would create an undue hardship. Mr. Socket should respond in writing. Ideally, Mr. Socket would be able to propose another solution for consideration.
Correct. All proposals should be thoughtfully considered. Again, if a requested accommodation is rejected, the reasons should be communicated in writing. And, the employer should actively engage in brainstorming and offering potential solutions for consideration.


Just say yes. It is easier than arguing with Mr. Spark and his representative.
Incorrect. It is important that disabled employees be given every opportunity to continue performing in the workplace. However, it is also important that accommodations not create an undue hardship, as defined by law, on the operation of the University's business.

Home Back Next Close

Equal Pay

The Equal Pay Act of 1963 requires that men and women be given **equal pay for equal work** in the same establishment, defining equal work as jobs whose performance "... requires equal skill, effort, and responsibility, and which are performed under similar working conditions."

The Equal Pay Act of 1963




Additional Reading: EEOC Guidance: [Equal Pay Act of 1963](#)

Home Back Next Close

Key Case: Stanley v. University of Southern California (1999)

Marianne Stanley was hired as the head coach of the women's basketball team for the University of Southern California in 1989. In 1992, Ms. Stanley and the University entered into negotiations for a renewal contract.

Ms. Stanley proposed that she be given a 3-year contract with a salary that built up, over time, to the amount paid to George Raveling, the head coach of the men's team. Ms. Stanley had 20 years of experience, including three at USC. Mr. Raveling had 31 years of experience and had won a number of coaching awards. He also had authored several books on basketball. The University rejected Ms. Stanley's proposal and offered her a 1-year contract at a lower salary than Mr. Raveling's. Ms. Stanley sued the University under the Equal Pay Act.



The court held that the University had a **nondiscriminatory reason for the pay differential**, the "markedly disparate levels of experience and qualifications" between the two coaches.

***Stanley v. University of Southern California* 178 F.3d 1069 (9th Cir. 1999)**

Intersectional Discrimination

The **EEOC Compliance Manual** states:

“Title VII prohibits discrimination not just because of one protected trait (e.g., race), but also because of the intersection of two or more protected bases (e.g., race and sex). For example, Title VII prohibits discrimination against African American women even if the employer does not discriminate against White women or African American men. Likewise, Title VII protects Asian American women from discrimination based on stereotypes and assumptions about them ‘even in the absence of discrimination against Asian American men or White women.’ The law also prohibits individuals from being subjected to discrimination because of the intersection of their race and a trait covered by another EEO statute – e.g., race and disability, or race and age.”


EEOC Compliance Manual Section 15

Additional Reading: EEOC Compliance Manual: [Intersectional Discrimination](#)

Home Back Next Close

Key Case: Lam v. University of Hawaii (1994)

Maivan Clech Lam is a woman of Vietnamese descent who applied, but was not selected, to head the University of Hawaii's Pacific Asian Legal Studies Program. In *Lam v. University of Hawaii* (1994), the University defended itself against charges of race and sex discrimination by arguing that the dean had wanted to include in the pool an Asian male who had missed the application deadline but deferred to Ms. Lam's contention that it would be unfair to re-open the search. The University also argued that it ultimately offered the position to a white female. Thus, it was argued, there was no race or sex discrimination. Lam, on the other hand, offered testimony showing one member of the search committee was biased against women and Asians. She also provided evidence that another white male faculty member felt the director of the program should be male.



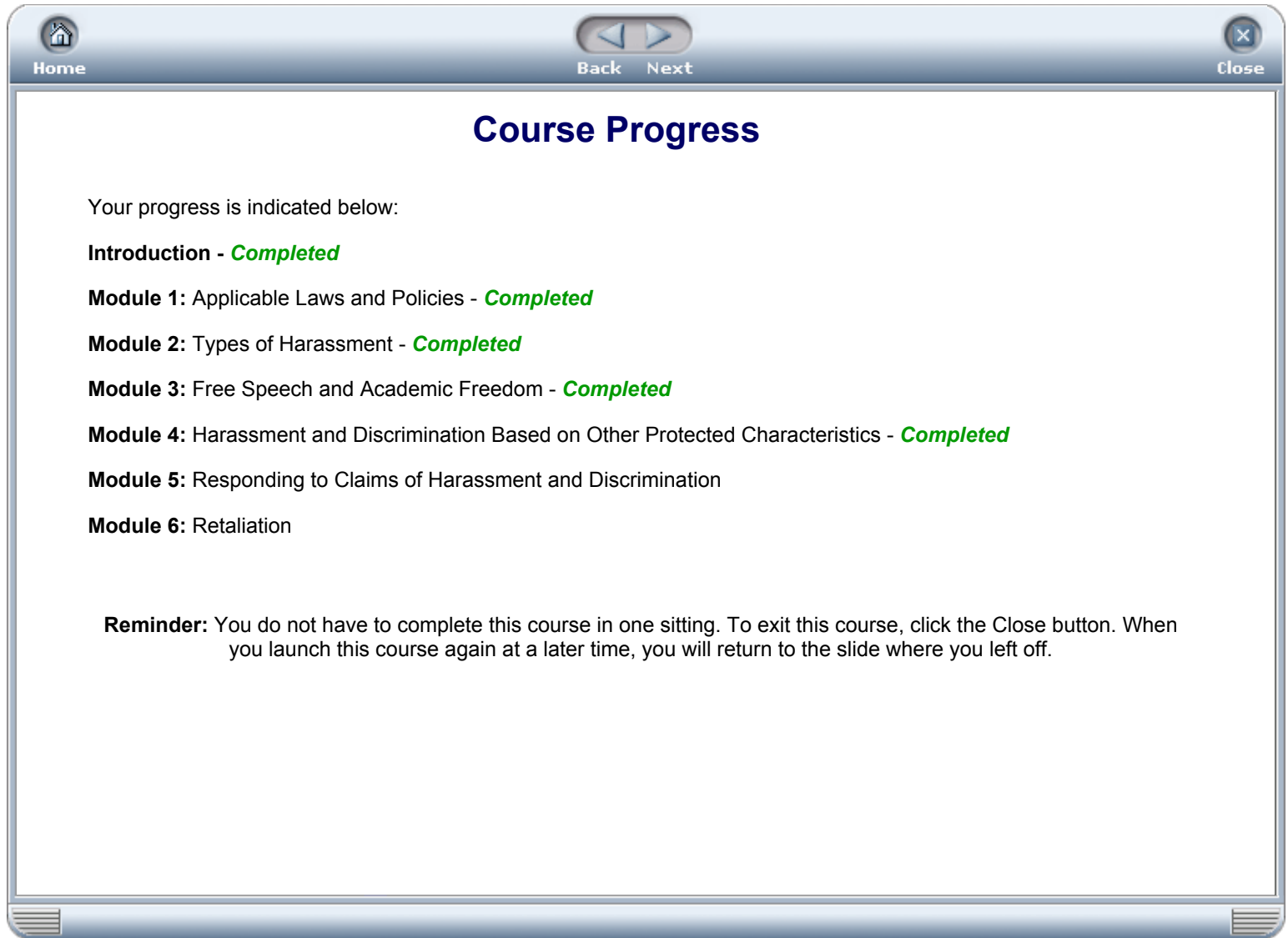
The court held that even if the evidence showed that the University does not discriminate against Asian men or white women, Ms. Lam might still be able to prove discrimination based on her identity as an Asian woman. The court held that it is not sufficient for the fact-finder to look for racism alone or sexism alone. The fact-finder must consider whether it was a combination of these two factors that drove the University's hiring decision.

***Lam v. University of Hawaii*, 40 F.3d 1551 (9th Cir. 1994)**

Introducing GINA

- Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), prohibits genetic information discrimination in employment. It became the law on November 21, 2009.
- Title II of GINA states that it is illegal to discriminate or harass employees or applicants because of genetic information. It prohibits the use of genetic information in making employment decisions, restricts acquisition of genetic information by employers and other entities covered by Title II, and strictly limits the disclosure of genetic information.
- Genetic information includes information about genetic tests and the genetic tests of an individual's family members, as well as family medical history. Family medical history is included in the definition of genetic information because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future.

Additional Reading: EEOC Information: [Genetic Information Discrimination](#)

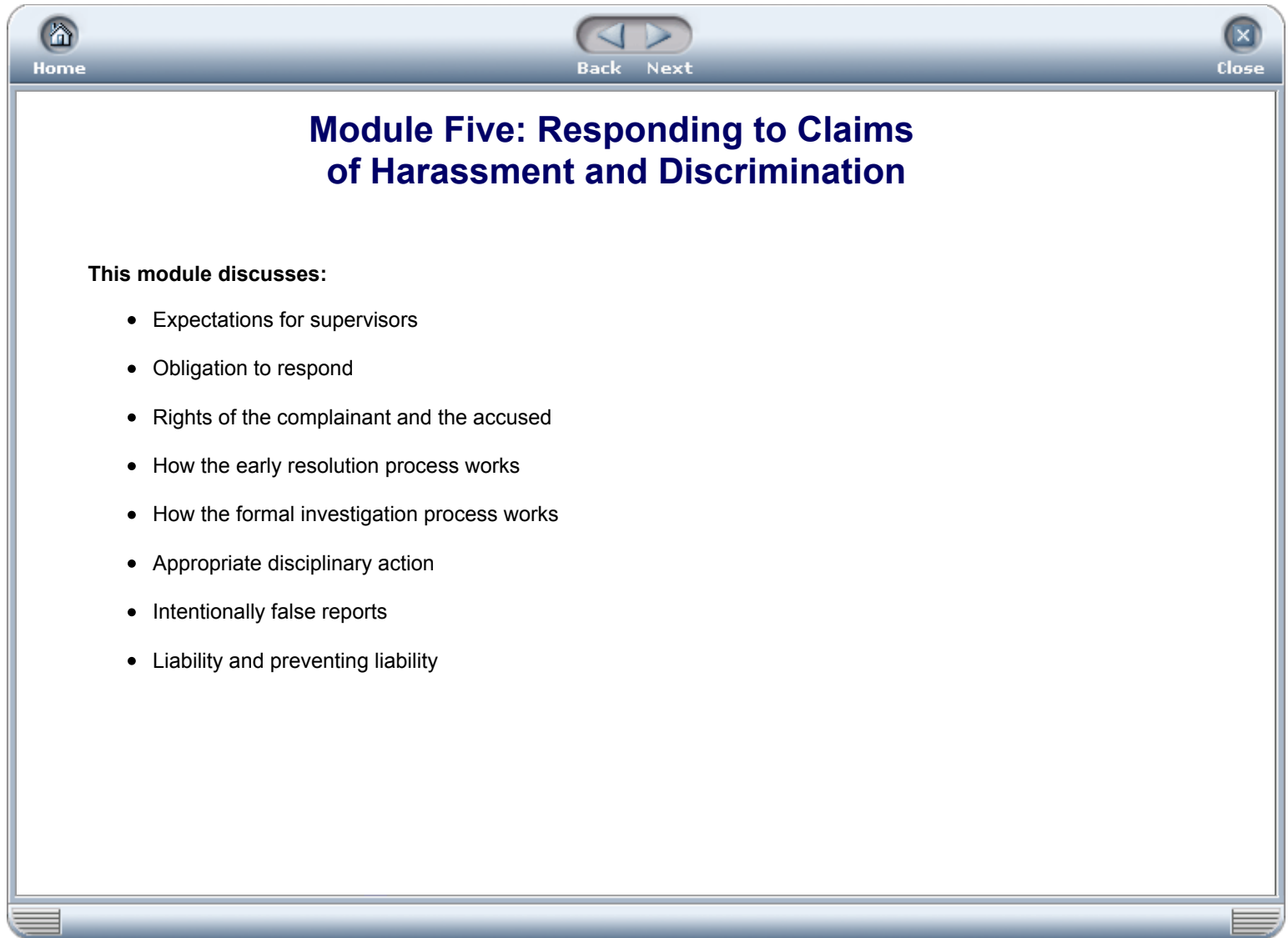


Course Progress

Your progress is indicated below:

- Introduction** - *Completed*
- Module 1:** Applicable Laws and Policies - *Completed*
- Module 2:** Types of Harassment - *Completed*
- Module 3:** Free Speech and Academic Freedom - *Completed*
- Module 4:** Harassment and Discrimination Based on Other Protected Characteristics - *Completed*
- Module 5:** Responding to Claims of Harassment and Discrimination
- Module 6:** Retaliation

Reminder: You do not have to complete this course in one sitting. To exit this course, click the Close button. When you launch this course again at a later time, you will return to the slide where you left off.



Module Five: Responding to Claims of Harassment and Discrimination

This module discusses:

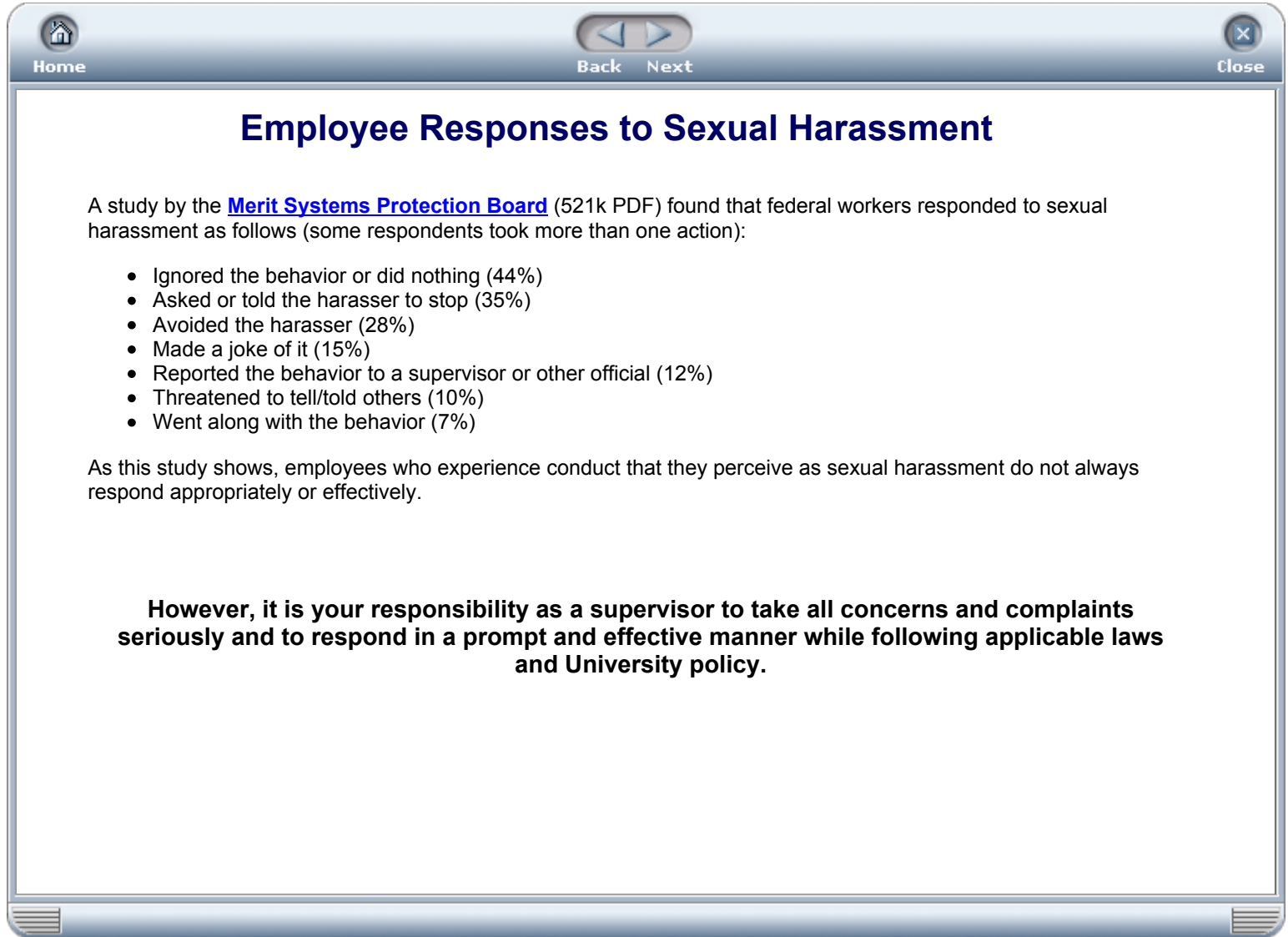
- Expectations for supervisors
- Obligation to respond
- Rights of the complainant and the accused
- How the early resolution process works
- How the formal investigation process works
- Appropriate disciplinary action
- Intentionally false reports
- Liability and preventing liability

Expectations for Supervisors

Supervisors are expected to set the tone for the department by avoiding conduct that is biased or discriminatory. If it is clear that you do not tolerate harassing or discriminatory remarks, jokes or conduct, it is much less likely that such behavior will occur in your department.

It is expected that as a supervisor you will:

- Conduct yourself in a way that aligns with the University's Policy on Sexual Harassment as well as the University's Nondiscrimination and Affirmative Action Policy.
- Inform others of their rights and responsibilities under the University's sexual harassment and non-discrimination policies.
- Report allegations of harassment and discrimination to the appropriate office immediately.
- Assist with the investigatory process. You are not the investigator but you may be asked to provide information or other assistance as the Sexual Harassment Officer or designee investigates the matter.
- Take corrective action as needed in accord with University policies and procedures.



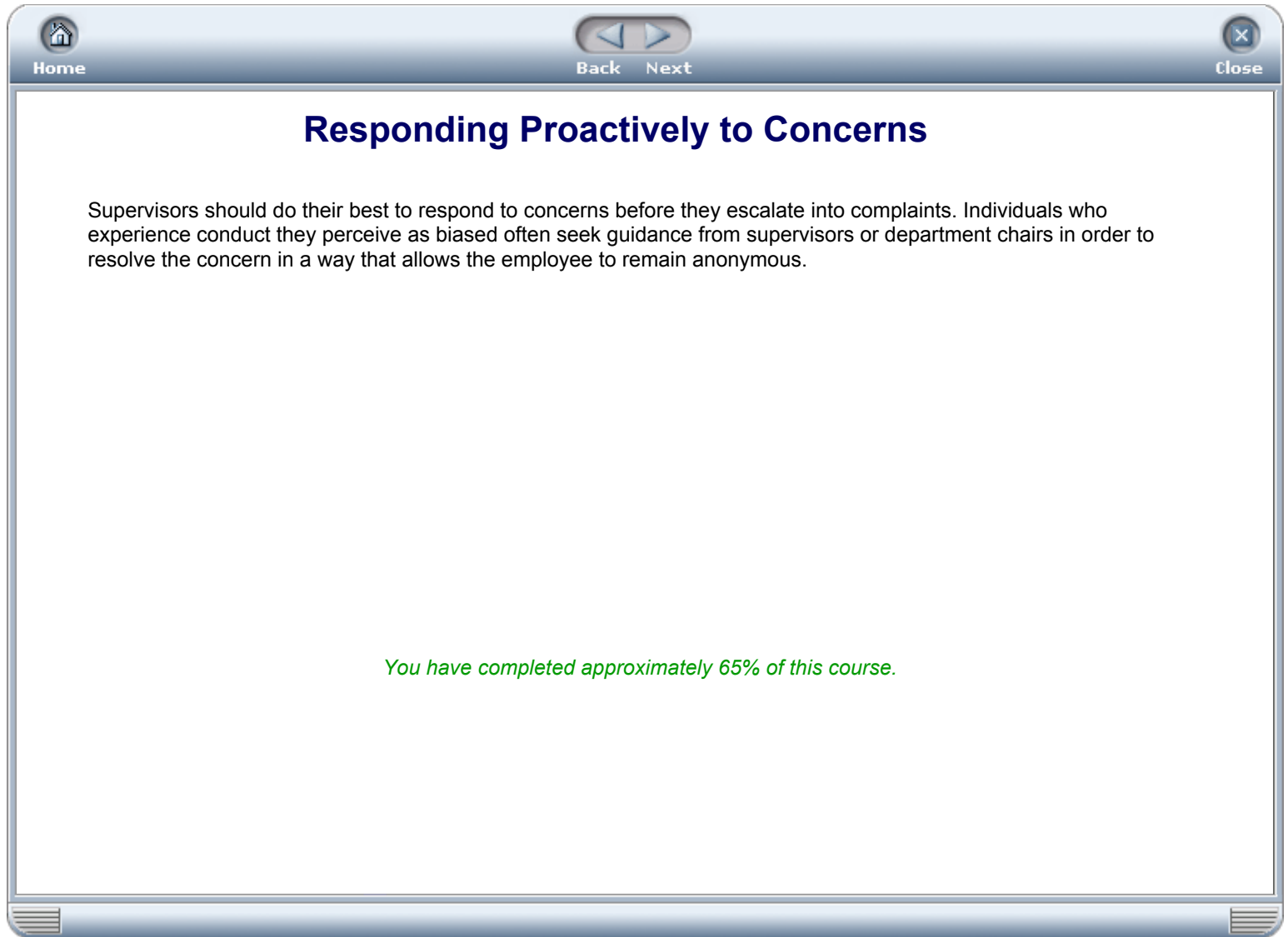
Employee Responses to Sexual Harassment

A study by the [Merit Systems Protection Board](#) (521k PDF) found that federal workers responded to sexual harassment as follows (some respondents took more than one action):

- Ignored the behavior or did nothing (44%)
- Asked or told the harasser to stop (35%)
- Avoided the harasser (28%)
- Made a joke of it (15%)
- Reported the behavior to a supervisor or other official (12%)
- Threatened to tell/told others (10%)
- Went along with the behavior (7%)

As this study shows, employees who experience conduct that they perceive as sexual harassment do not always respond appropriately or effectively.

However, it is your responsibility as a supervisor to take all concerns and complaints seriously and to respond in a prompt and effective manner while following applicable laws and University policy.



Home **Back** **Next** **Close**

Responding Proactively to Concerns

Supervisors should do their best to respond to concerns before they escalate into complaints. Individuals who experience conduct they perceive as biased often seek guidance from supervisors or department chairs in order to resolve the concern in a way that allows the employee to remain anonymous.

You have completed approximately 65% of this course.



Home



Back Next



Close

Supervisor's Obligation to Respond

Once an employer knows or should have known of harassment, it has an obligation to take prompt and effective remedial action.

Steiner v. Showboat Operating Company, 25 F.3d 1459 (9th Cir. 1994)


While some concerns may be resolved effectively before they escalate into a complaint, it is important for supervisors to be aware that once an employee has made specific allegations of sexual harassment, including third-party harassment, that identify the alleged harasser(s), the supervisor is legally obligated to report it to the location's Sexual Harassment Officer.



HomeBack NextClose

Case Study: Professor Monopoly

Professor Minnie Monopoly is the only female Assistant Professor in the Department of Economics. Professor Monopoly is concerned about the double entendres that are frequently made around the office. Professor Monopoly is concerned as much for others in the vicinity as she is for herself. She comes to you, the Department Chair, looking for advice, but has no interest in filing a formal complaint as she believes she will simply create enemies by doing so. She also stated that she does not feel she has been harassed.




Which option makes the most sense under the circumstances?

- Tell Professor Monopoly you have no choice but to report the matter to the Sexual Harassment Officer and initiate an investigation.
- Tell Professor Monopoly you will discuss appropriate workplace behavior at the next departmental meeting without mentioning who brought the concern to your attention.
- Tell Professor Monopoly the department has a long-standing culture of risqué jokes as it lightens the tension in the office.

Home Back Next Close

Case Study: Professor Monopoly

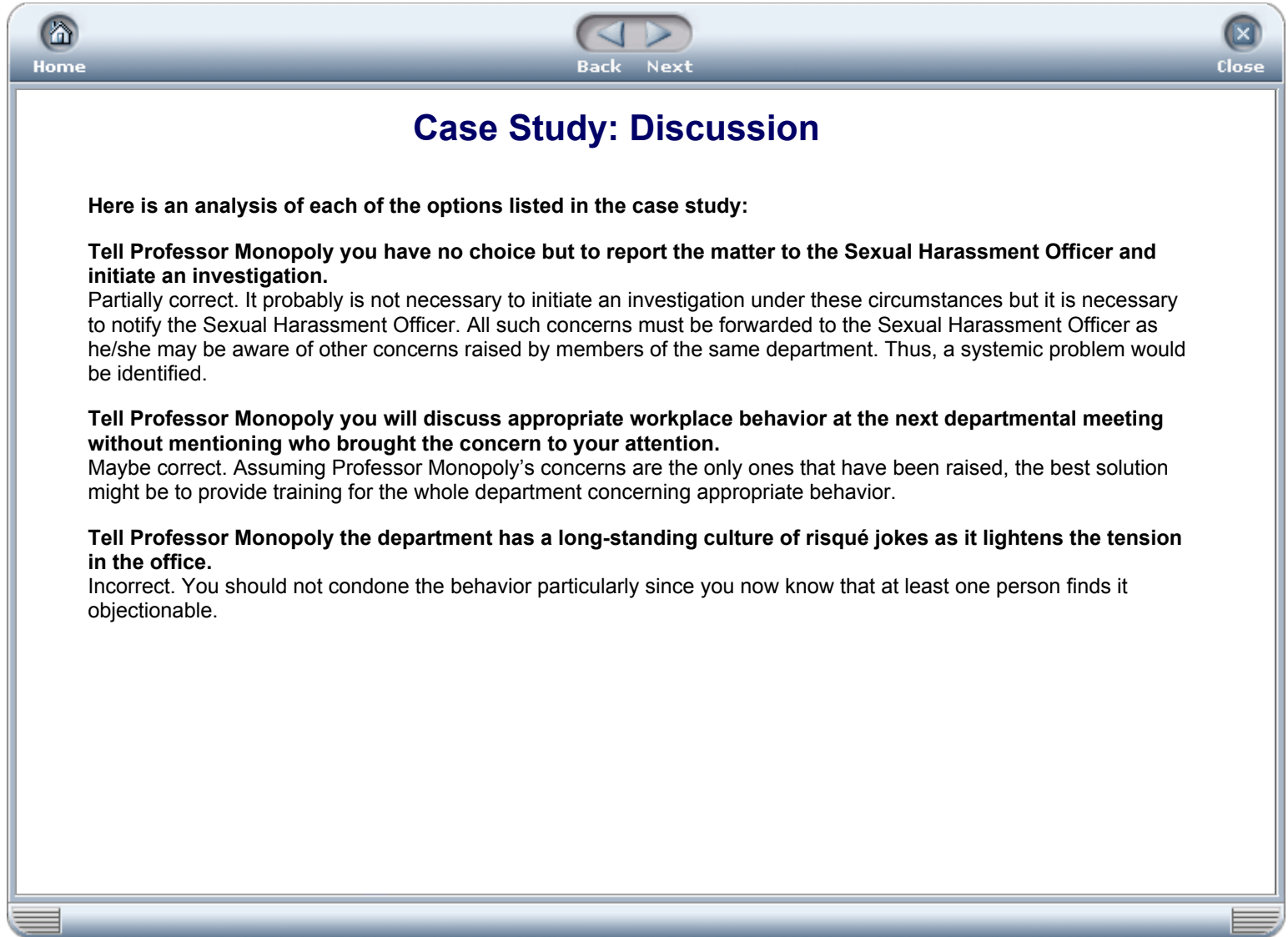
Professor Minnie Monopoly is the only female Assistant Professor in the Department of Economics. Professor Monopoly is concerned about the double entendres that are frequently made around the office. Professor Monopoly is concerned as much for others in the vicinity as she is for herself. She comes to you, the Department Chair, looking for advice, but has no interest in filing a formal complaint as she believes she will simply create enemies by doing so. She also stated that she does not feel she has been harassed.



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- Tell Professor Monopoly you will discuss appropriate workplace behavior at the next departmental meeting without mentioning who brought the concern to your attention.
- Tell Professor Monopoly the department has a long-standing culture of risqué jokes as it lightens the tension in the office.

That MAY BE CORRECT.
Click the Next button to read a discussion of this case study.



Home **Back** **Next** **Close**

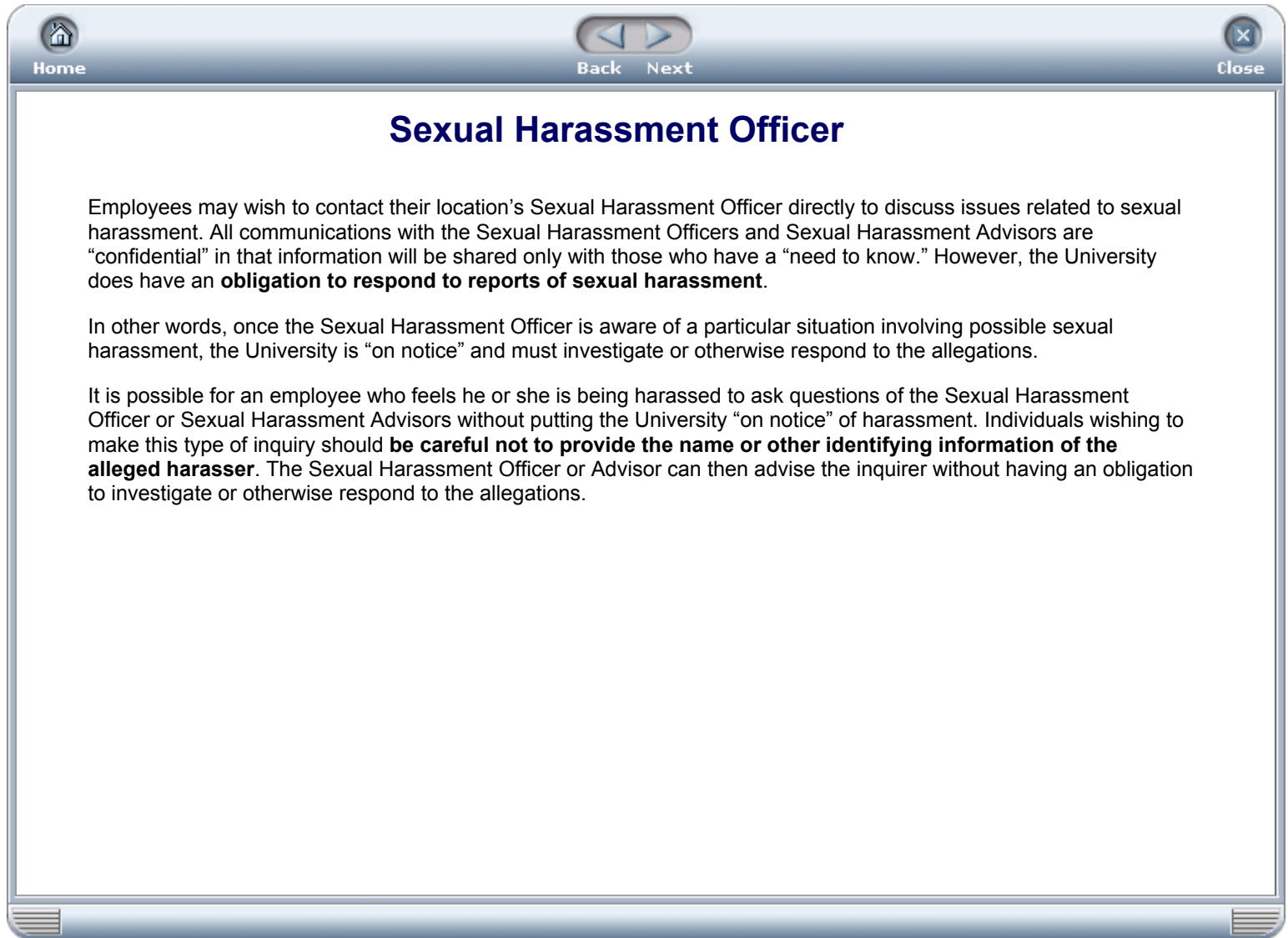
Case Study: Discussion

Here is an analysis of each of the options listed in the case study:

Tell Professor Monopoly you have no choice but to report the matter to the Sexual Harassment Officer and initiate an investigation.
Partially correct. It probably is not necessary to initiate an investigation under these circumstances but it is necessary to notify the Sexual Harassment Officer. All such concerns must be forwarded to the Sexual Harassment Officer as he/she may be aware of other concerns raised by members of the same department. Thus, a systemic problem would be identified.

Tell Professor Monopoly you will discuss appropriate workplace behavior at the next departmental meeting without mentioning who brought the concern to your attention.
Maybe correct. Assuming Professor Monopoly's concerns are the only ones that have been raised, the best solution might be to provide training for the whole department concerning appropriate behavior.

Tell Professor Monopoly the department has a long-standing culture of risqué jokes as it lightens the tension in the office.
Incorrect. You should not condone the behavior particularly since you now know that at least one person finds it objectionable.



Sexual Harassment Officer

Employees may wish to contact their location's Sexual Harassment Officer directly to discuss issues related to sexual harassment. All communications with the Sexual Harassment Officers and Sexual Harassment Advisors are "confidential" in that information will be shared only with those who have a "need to know." However, the University does have an **obligation to respond to reports of sexual harassment**.

In other words, once the Sexual Harassment Officer is aware of a particular situation involving possible sexual harassment, the University is "on notice" and must investigate or otherwise respond to the allegations.

It is possible for an employee who feels he or she is being harassed to ask questions of the Sexual Harassment Officer or Sexual Harassment Advisors without putting the University "on notice" of harassment. Individuals wishing to make this type of inquiry should **be careful not to provide the name or other identifying information of the alleged harasser**. The Sexual Harassment Officer or Advisor can then advise the inquirer without having an obligation to investigate or otherwise respond to the allegations.

Home Back Next Close

Sexual Harassment Advisors

Many locations have designated and trained individuals other than the Sexual Harassment Officer to serve as additional resources for members of the University community who have questions or concerns regarding behavior that may be sexual harassment.



The image shows a woman with dark hair, wearing a dark jacket, sitting at a desk in a modern office environment. She is looking down at a document or laptop on the desk. The office has large windows in the background, and there are other desks and chairs visible, suggesting a professional setting.


Home Back Next Close

Other Options for Advice

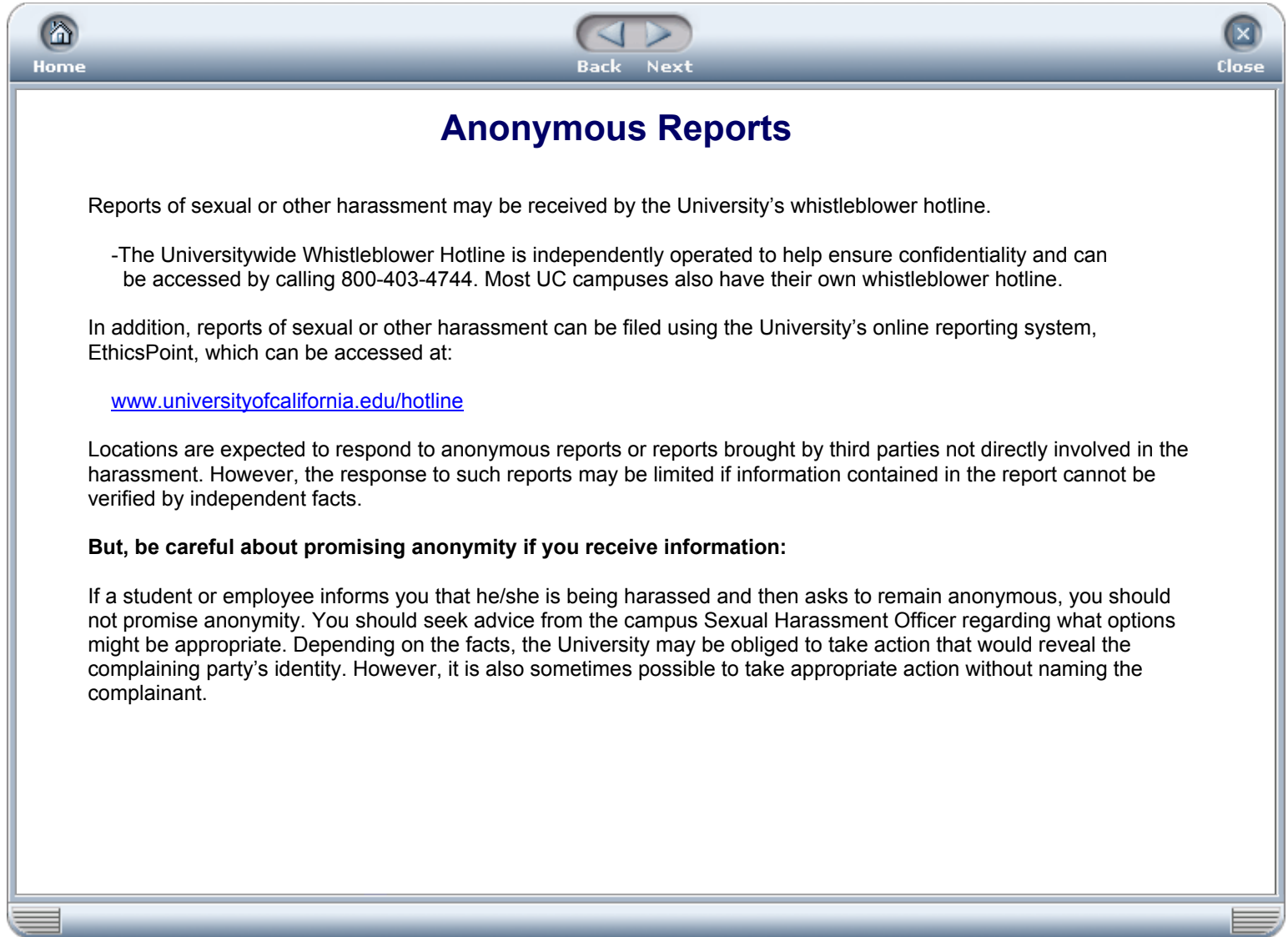
Employees should also be aware that there are resources available to them that can provide consultation without any further obligation. Before deciding how to respond to unwelcome behavior, employees may wish to make use of these resources to discuss their options.

Employees should check with their campus Sexual Harassment Officer regarding confidential resources that may be available. Depending on the campus or location, the following resources may be available to discuss sexual harassment concerns without any obligation to initiate an investigation or respond to the concern:

- Counseling Center
- Employee Assistance Program
- Ombuds Office



The image shows five black silhouettes of people standing in a line against a light background. From left to right, there is a man in a suit, a woman in a dress, a man in a suit, a man in a suit, and a woman in a dress. They are all holding hands, suggesting a group of people providing mutual support or a community.



The image shows a presentation slide with a blue header bar. The header bar contains a 'Home' button on the left, 'Back' and 'Next' navigation buttons in the center, and a 'Close' button on the right. The main content area is white with a blue title 'Anonymous Reports'. The text on the slide discusses the University's whistleblower hotline, the EthicsPoint reporting system, and the importance of not promising anonymity.

Anonymous Reports

Reports of sexual or other harassment may be received by the University's whistleblower hotline.

- The Universitywide Whistleblower Hotline is independently operated to help ensure confidentiality and can be accessed by calling 800-403-4744. Most UC campuses also have their own whistleblower hotline.

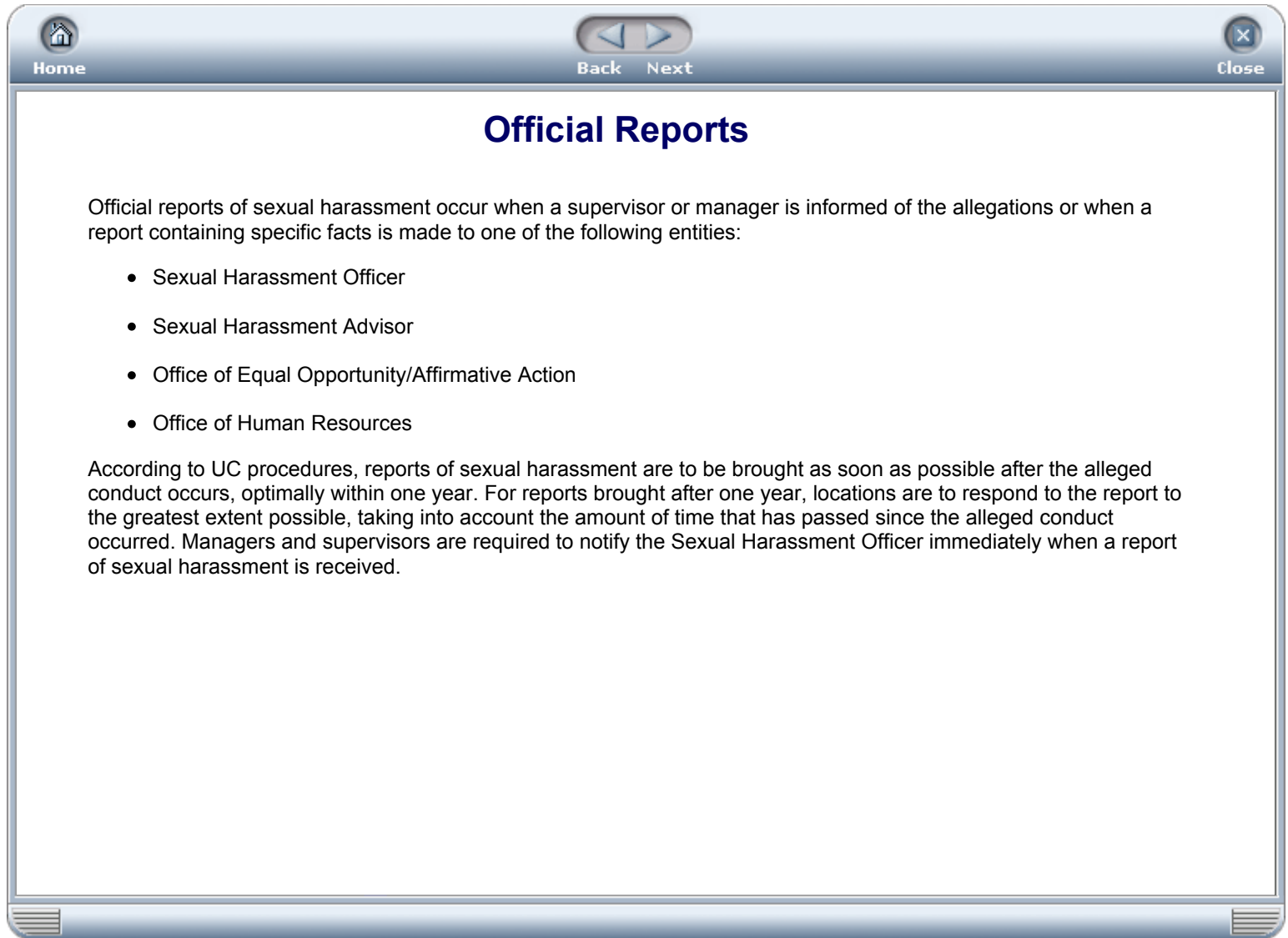
In addition, reports of sexual or other harassment can be filed using the University's online reporting system, EthicsPoint, which can be accessed at:

www.universityofcalifornia.edu/hotline

Locations are expected to respond to anonymous reports or reports brought by third parties not directly involved in the harassment. However, the response to such reports may be limited if information contained in the report cannot be verified by independent facts.

But, be careful about promising anonymity if you receive information:

If a student or employee informs you that he/she is being harassed and then asks to remain anonymous, you should not promise anonymity. You should seek advice from the campus Sexual Harassment Officer regarding what options might be appropriate. Depending on the facts, the University may be obliged to take action that would reveal the complaining party's identity. However, it is also sometimes possible to take appropriate action without naming the complainant.



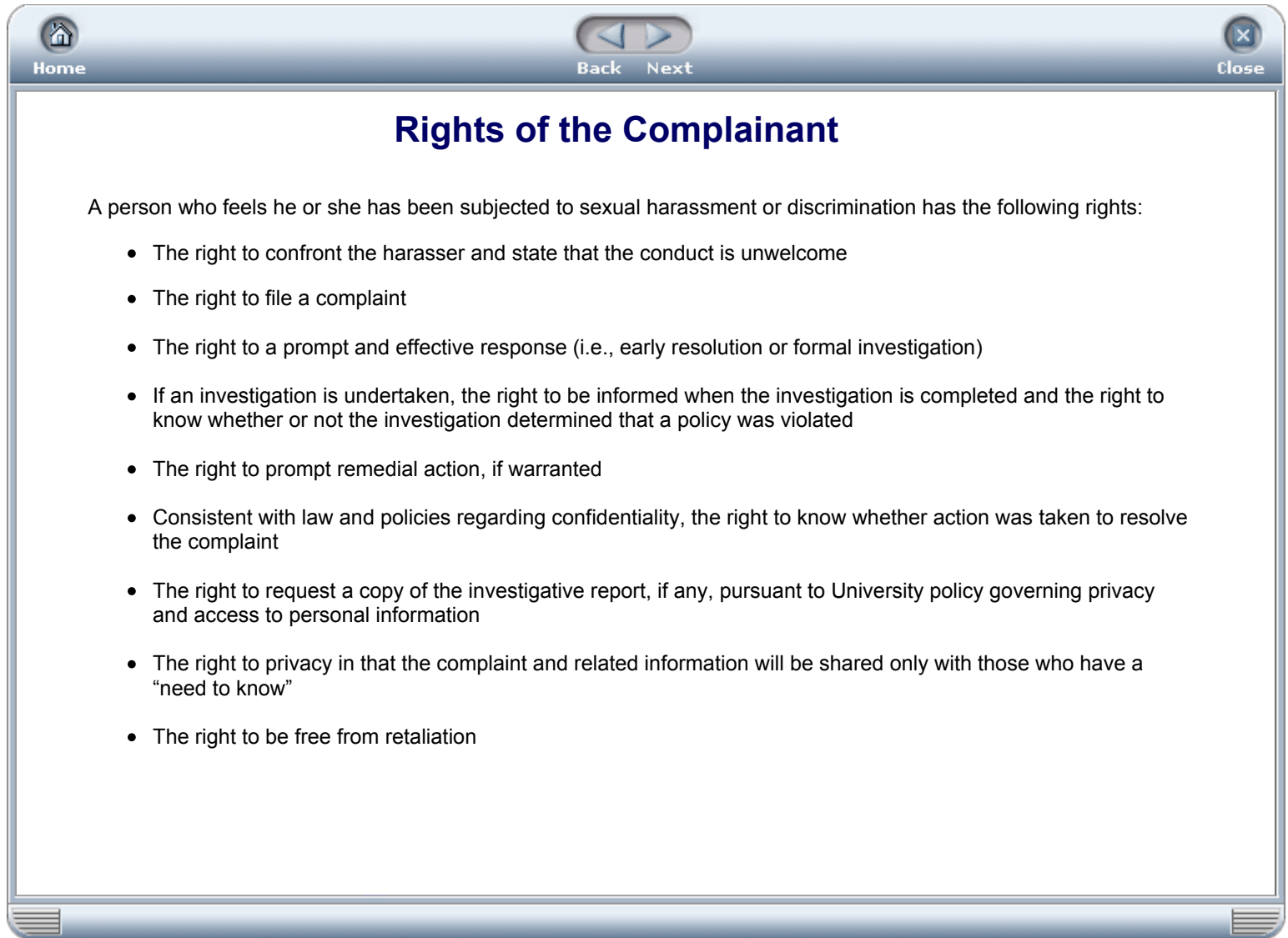
The image shows a presentation slide with a blue header bar. The header bar contains a 'Home' button with a house icon, a 'Back' button with a left arrow, a 'Next' button with a right arrow, and a 'Close' button with an 'X' icon. The main content area is white and features the title 'Official Reports' in a large, bold, blue font. Below the title, there is a paragraph of text followed by a bulleted list of four entities. At the bottom of the slide, there is another paragraph of text. The slide is framed by a blue border with a slight shadow effect.

Official Reports

Official reports of sexual harassment occur when a supervisor or manager is informed of the allegations or when a report containing specific facts is made to one of the following entities:

- Sexual Harassment Officer
- Sexual Harassment Advisor
- Office of Equal Opportunity/Affirmative Action
- Office of Human Resources

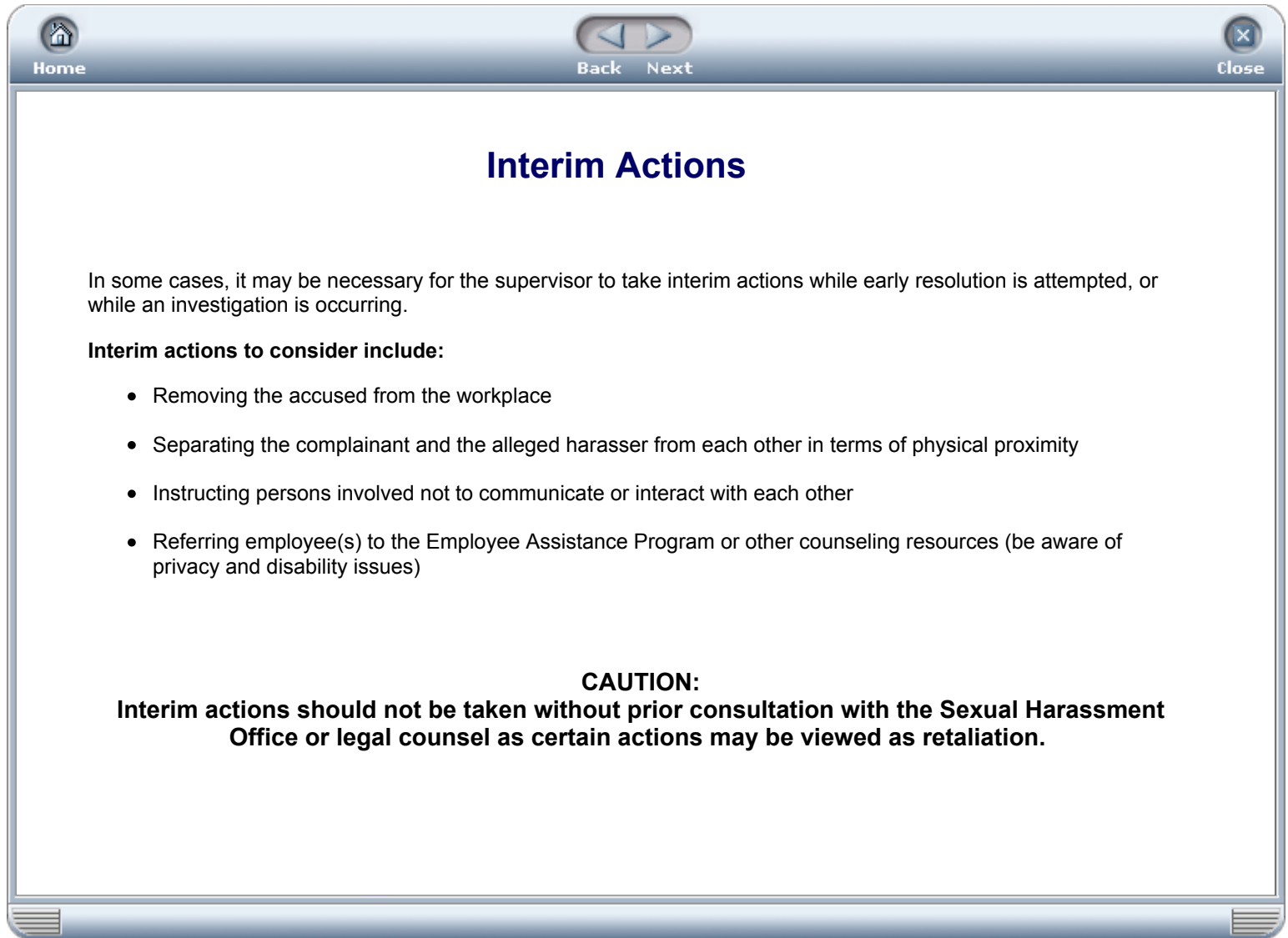
According to UC procedures, reports of sexual harassment are to be brought as soon as possible after the alleged conduct occurs, optimally within one year. For reports brought after one year, locations are to respond to the report to the greatest extent possible, taking into account the amount of time that has passed since the alleged conduct occurred. Managers and supervisors are required to notify the Sexual Harassment Officer immediately when a report of sexual harassment is received.



Rights of the Complainant

A person who feels he or she has been subjected to sexual harassment or discrimination has the following rights:

- The right to confront the harasser and state that the conduct is unwelcome
- The right to file a complaint
- The right to a prompt and effective response (i.e., early resolution or formal investigation)
- If an investigation is undertaken, the right to be informed when the investigation is completed and the right to know whether or not the investigation determined that a policy was violated
- The right to prompt remedial action, if warranted
- Consistent with law and policies regarding confidentiality, the right to know whether action was taken to resolve the complaint
- The right to request a copy of the investigative report, if any, pursuant to University policy governing privacy and access to personal information
- The right to privacy in that the complaint and related information will be shared only with those who have a "need to know"
- The right to be free from retaliation



Home

Back

Next

Close

Interim Actions

In some cases, it may be necessary for the supervisor to take interim actions while early resolution is attempted, or while an investigation is occurring.

Interim actions to consider include:

- Removing the accused from the workplace
- Separating the complainant and the alleged harasser from each other in terms of physical proximity
- Instructing persons involved not to communicate or interact with each other
- Referring employee(s) to the Employee Assistance Program or other counseling resources (be aware of privacy and disability issues)

CAUTION:

Interim actions should not be taken without prior consultation with the Sexual Harassment Office or legal counsel as certain actions may be viewed as retaliation.

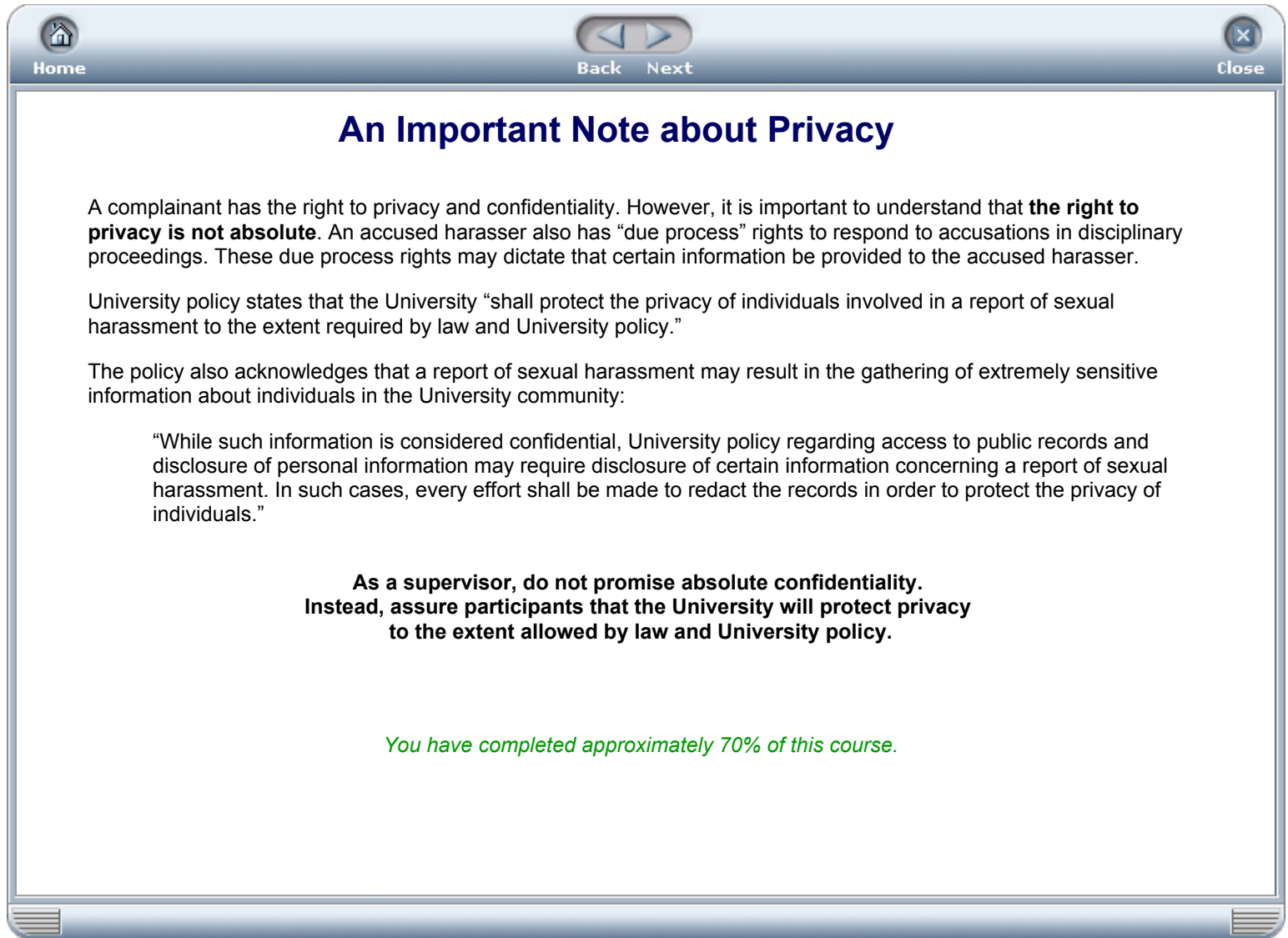
Rights of the Accused

Any person being accused of sexual harassment also has rights by law and by University policy:

- The right to be free from defamation and invasion of privacy
- The right to be informed of and respond to the allegations
- The right to be informed of the findings

If you are accused of sexual harassment, you should:

- Notify the Sexual Harassment Officer immediately
- Consult with Human Resources to obtain information about process and timelines
- Make use of counseling services provided by your healthcare plan or the campus Employee Assistance Program (EAP)



An Important Note about Privacy

A complainant has the right to privacy and confidentiality. However, it is important to understand that **the right to privacy is not absolute**. An accused harasser also has “due process” rights to respond to accusations in disciplinary proceedings. These due process rights may dictate that certain information be provided to the accused harasser.

University policy states that the University “shall protect the privacy of individuals involved in a report of sexual harassment to the extent required by law and University policy.”

The policy also acknowledges that a report of sexual harassment may result in the gathering of extremely sensitive information about individuals in the University community:

“While such information is considered confidential, University policy regarding access to public records and disclosure of personal information may require disclosure of certain information concerning a report of sexual harassment. In such cases, every effort shall be made to redact the records in order to protect the privacy of individuals.”

**As a supervisor, do not promise absolute confidentiality.
Instead, assure participants that the University will protect privacy
to the extent allowed by law and University policy.**

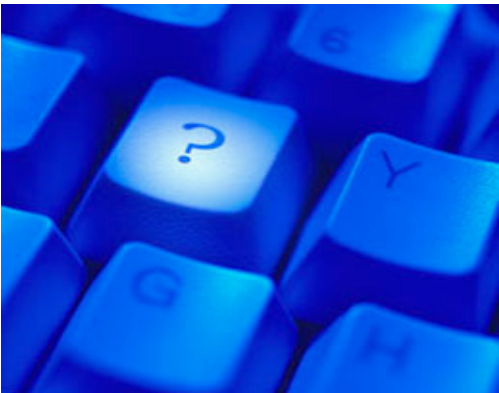
You have completed approximately 70% of this course.

Home

Back Next

Close

Check Your Understanding



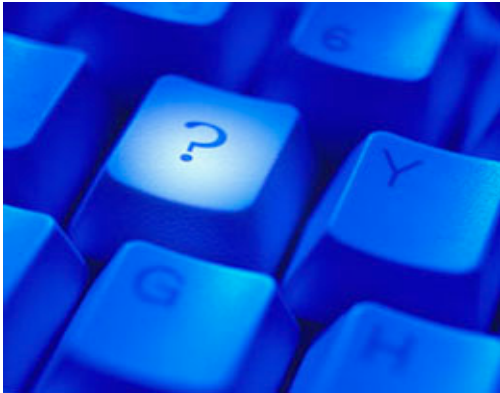
True or False: The majority of individuals who experience unwelcome sexual conduct tell the harasser to stop.

True

False

Home Back Next Close

Check Your Understanding



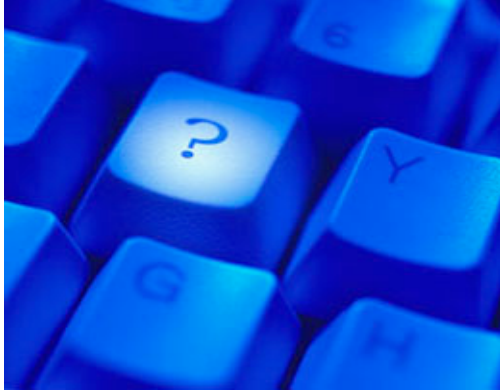
True or False: The majority of individuals who experience unwelcome sexual conduct tell the harasser to stop.

True **That is CORRECT.**

False **The majority of people who are harassed do not confront the person who is engaging in the unwelcome behavior. Click the Next button to continue.**

Home Back Next Close

Check Your Understanding



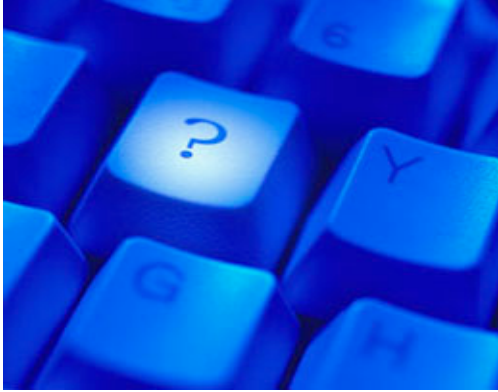
True or False: If an employee complains of sexual harassment to the Employee Assistance Program, the University is obligated to investigate the complaint.

True

False

Home Back Next Close

Check Your Understanding



True or False: If an employee complains of sexual harassment to the Employee Assistance Program, the University is obligated to investigate the complaint.

True **That is CORRECT.**
The Employee Assistance Programs provide counseling but do not receive “official reports” on behalf of the University. Click the Next button to continue.


False

Home Back Next Close

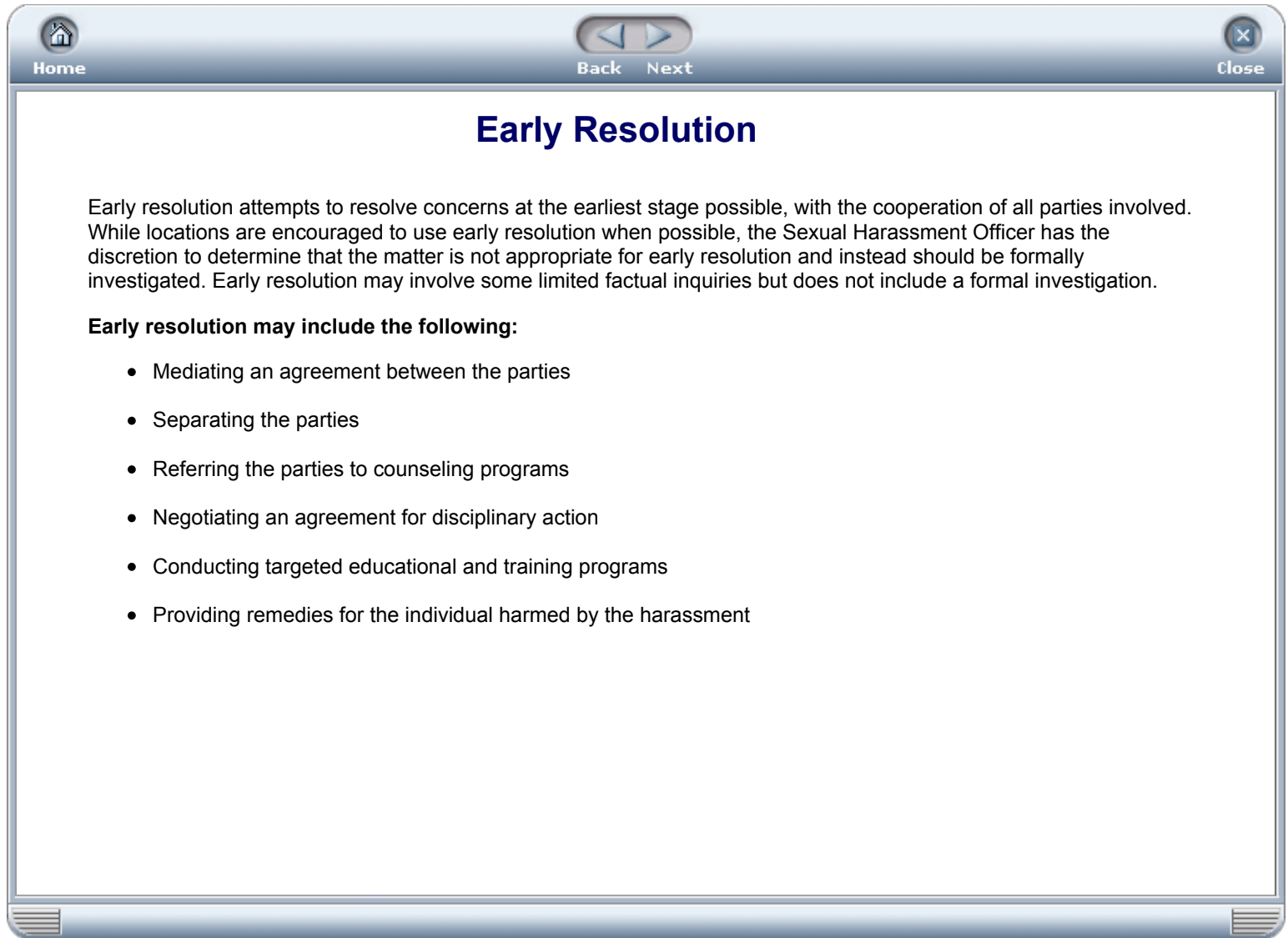
Options After Reporting Sexual Harassment

Once the University's Sexual Harassment Office has been notified that an employee believes they have been harassed, the University policy provides two main options for proceeding with the complaint:

- Early resolution
- Formal investigation



In some cases, the process for sexual harassment will overlap with other complaint resolution or grievance procedures.



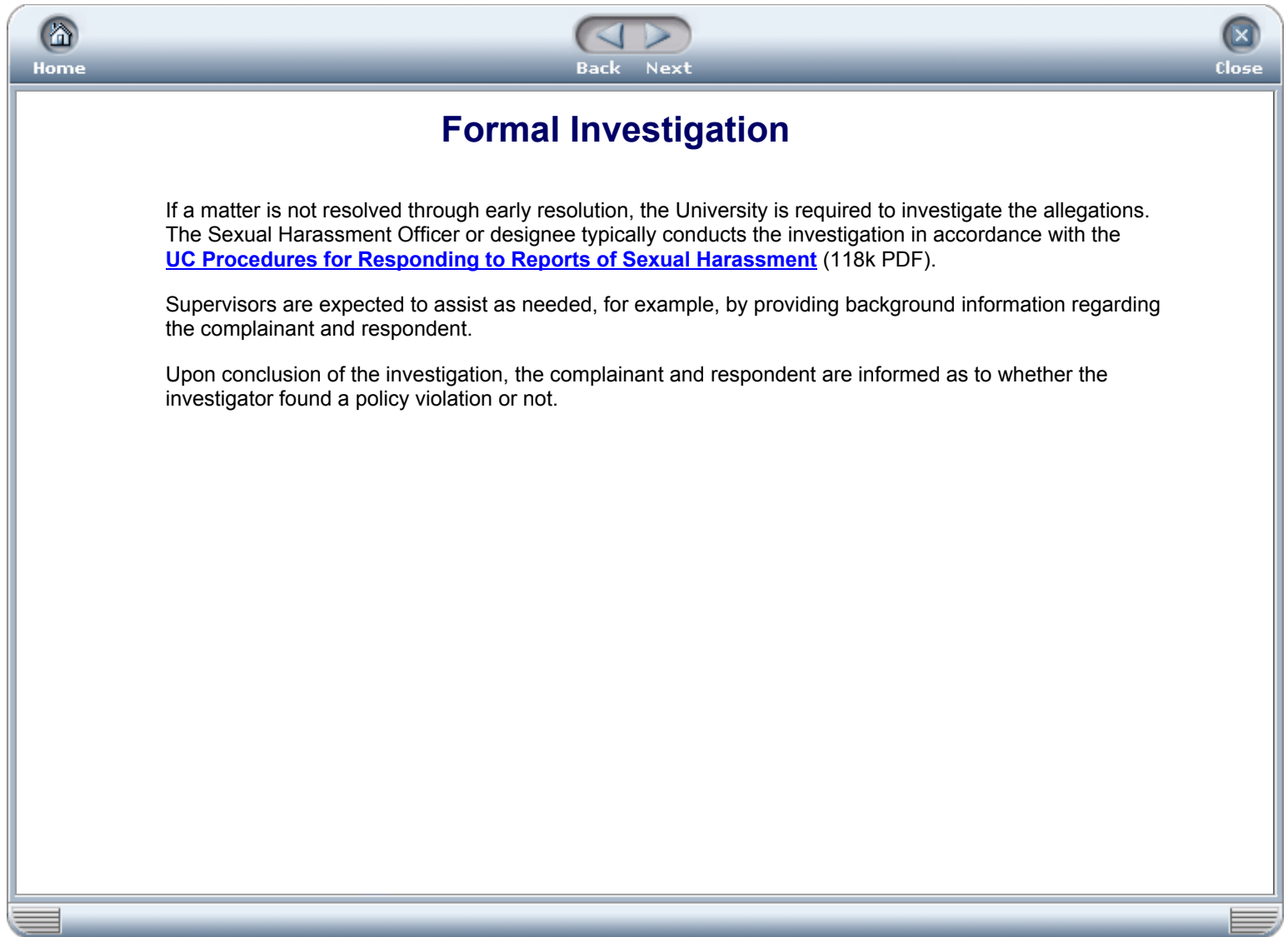
Home Back Next Close

Early Resolution

Early resolution attempts to resolve concerns at the earliest stage possible, with the cooperation of all parties involved. While locations are encouraged to use early resolution when possible, the Sexual Harassment Officer has the discretion to determine that the matter is not appropriate for early resolution and instead should be formally investigated. Early resolution may involve some limited factual inquiries but does not include a formal investigation.

Early resolution may include the following:

- Mediating an agreement between the parties
- Separating the parties
- Referring the parties to counseling programs
- Negotiating an agreement for disciplinary action
- Conducting targeted educational and training programs
- Providing remedies for the individual harmed by the harassment

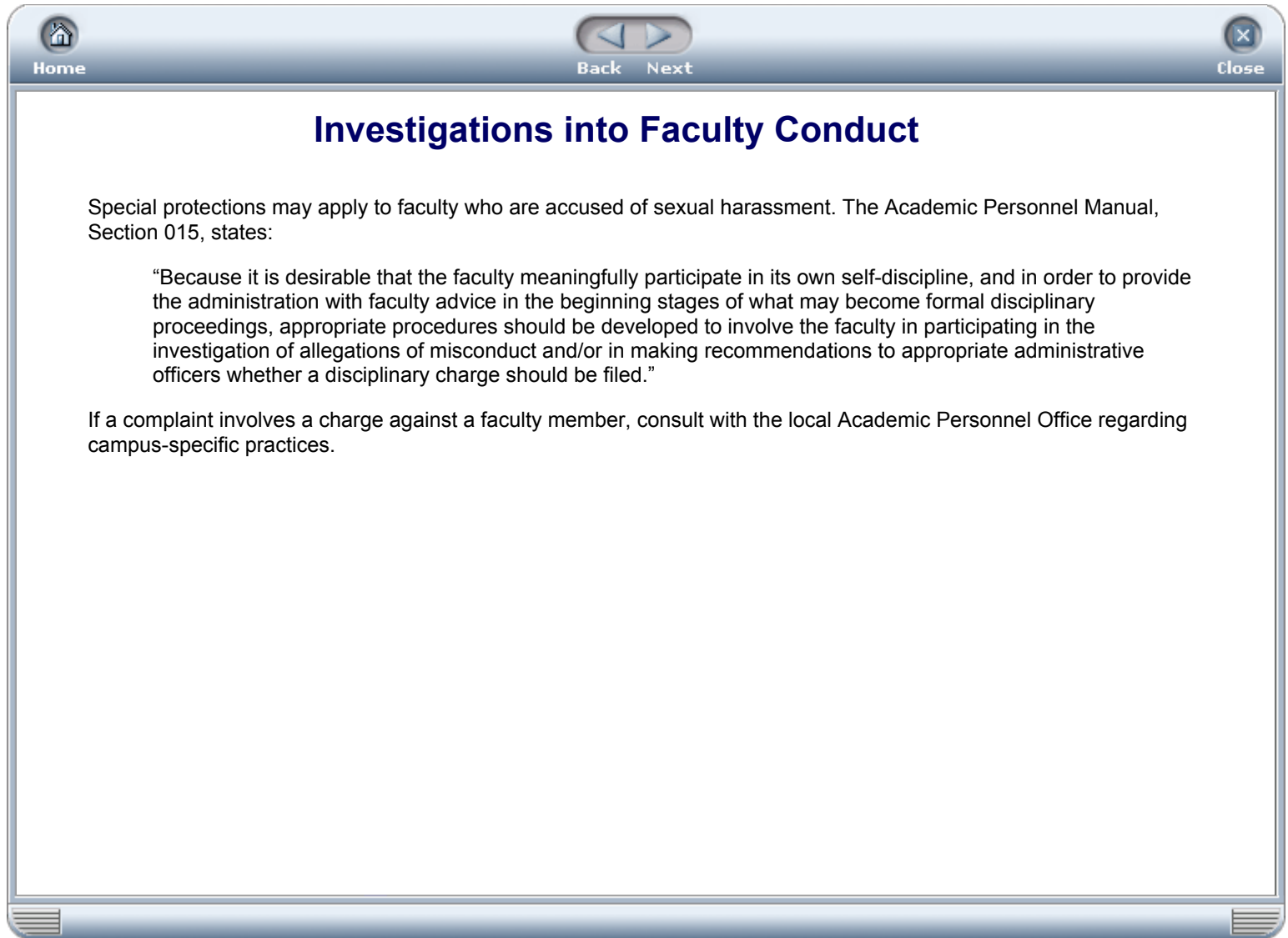


Formal Investigation

If a matter is not resolved through early resolution, the University is required to investigate the allegations. The Sexual Harassment Officer or designee typically conducts the investigation in accordance with the [UC Procedures for Responding to Reports of Sexual Harassment](#) (118k PDF).

Supervisors are expected to assist as needed, for example, by providing background information regarding the complainant and respondent.

Upon conclusion of the investigation, the complainant and respondent are informed as to whether the investigator found a policy violation or not.



Investigations into Faculty Conduct

Special protections may apply to faculty who are accused of sexual harassment. The Academic Personnel Manual, Section 015, states:

“Because it is desirable that the faculty meaningfully participate in its own self-discipline, and in order to provide the administration with faculty advice in the beginning stages of what may become formal disciplinary proceedings, appropriate procedures should be developed to involve the faculty in participating in the investigation of allegations of misconduct and/or in making recommendations to appropriate administrative officers whether a disciplinary charge should be filed.”


If a complaint involves a charge against a faculty member, consult with the local Academic Personnel Office regarding campus-specific practices.

Home

Back Next

Close

Check Your Understanding



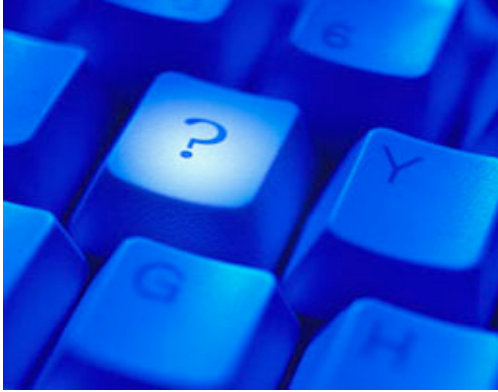
True or False: Supervisors are responsible for investigating complaints of sexual harassment.

True

False

Home Back Next Close

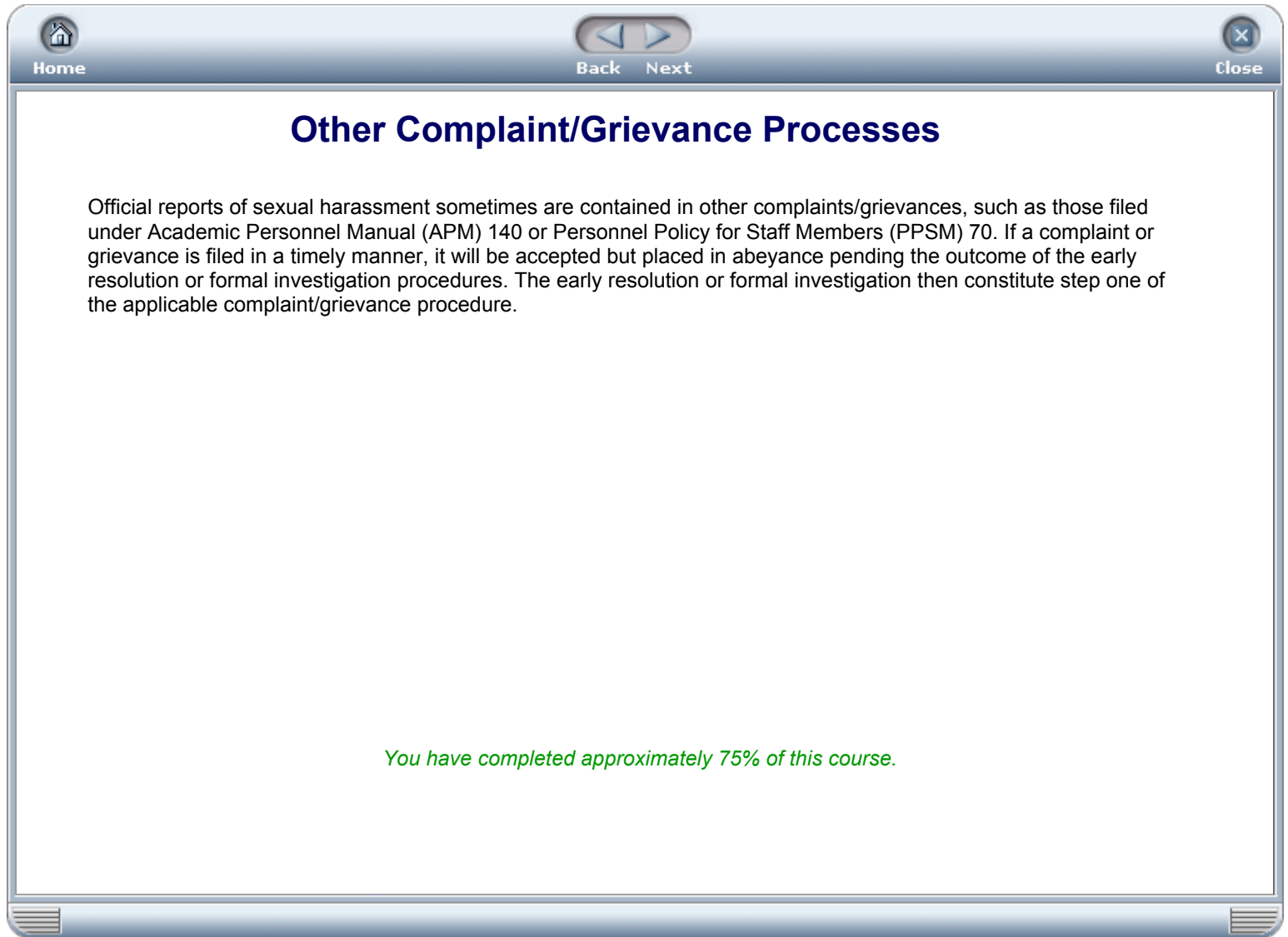
Check Your Understanding



True or False: Supervisors are responsible for investigating complaints of sexual harassment.

True **That is CORRECT.**
The Sexual Harassment Officers or their designees are responsible for conducting sexual harassment investigations. Click the Next button to continue.

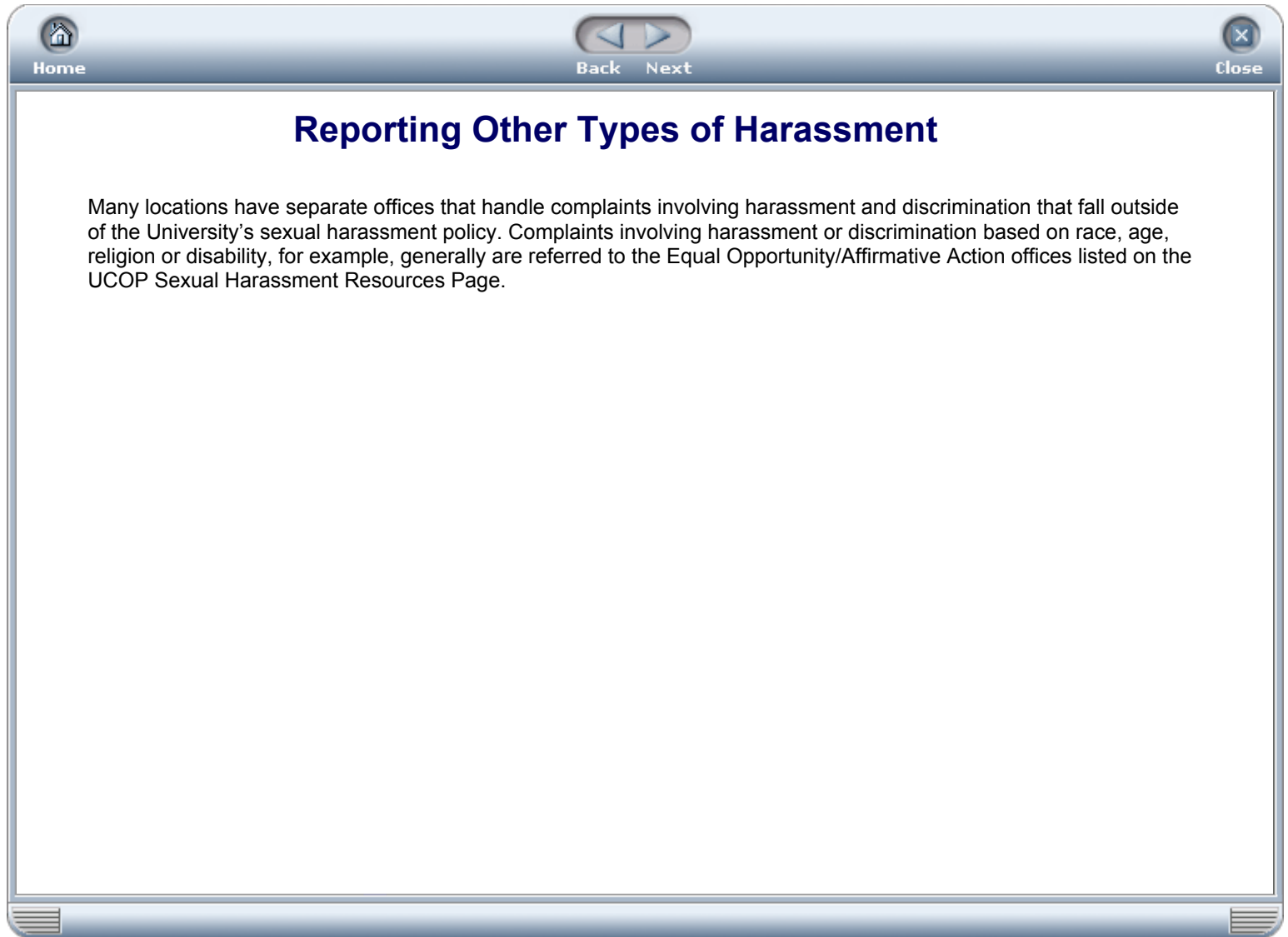
False



Other Complaint/Grievance Processes

Official reports of sexual harassment sometimes are contained in other complaints/grievances, such as those filed under Academic Personnel Manual (APM) 140 or Personnel Policy for Staff Members (PPSM) 70. If a complaint or grievance is filed in a timely manner, it will be accepted but placed in abeyance pending the outcome of the early resolution or formal investigation procedures. The early resolution or formal investigation then constitute step one of the applicable complaint/grievance procedure.

You have completed approximately 75% of this course.



Reporting Other Types of Harassment

Many locations have separate offices that handle complaints involving harassment and discrimination that fall outside of the University's sexual harassment policy. Complaints involving harassment or discrimination based on race, age, religion or disability, for example, generally are referred to the Equal Opportunity/Affirmative Action offices listed on the UCOP Sexual Harassment Resources Page.

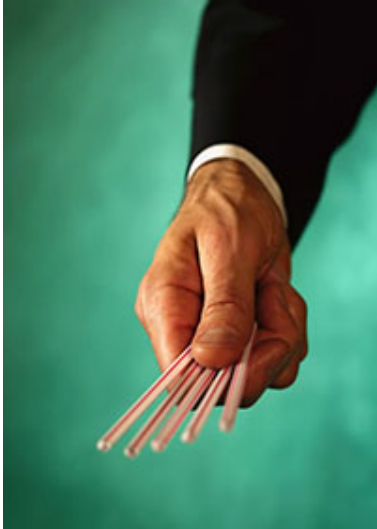
HomeBack NextClose

Case Study: Mary Somerville

You are the Management Services Officer (MSO) of the Department of Mathematics. Late one Friday afternoon, one of your faculty members, Mary Somerville, tells you she is being sexually harassed by a colleague. She tells you she does not want anything to happen, but just wanted to vent to you. When you ask her for more information, she refuses to provide any specifics and will not tell you the name of the colleague

Which of the following actions should you take?
(You may select more than one option.)

- Do nothing. Ms. Somerville specifically asked that nothing be done.
- Encourage Ms. Somerville to tell the harasser to stop.
- Ask the faculty and staff in your department whether they have engaged in any unwelcome conduct toward Ms. Somerville.
- Distribute the University's Sexual Harassment Policy and Procedures to everyone in your department.
- Call the Sexual Harassment Officer for advice.



Home Back Next Close

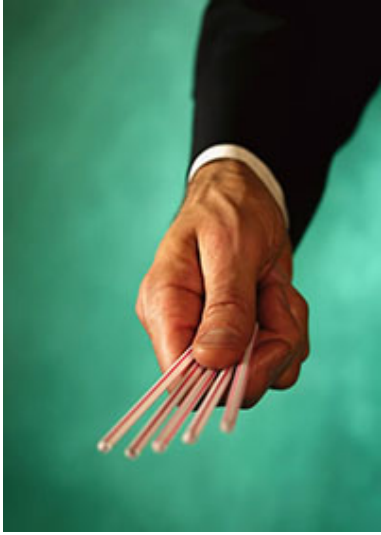
Case Study: Mary Somerville

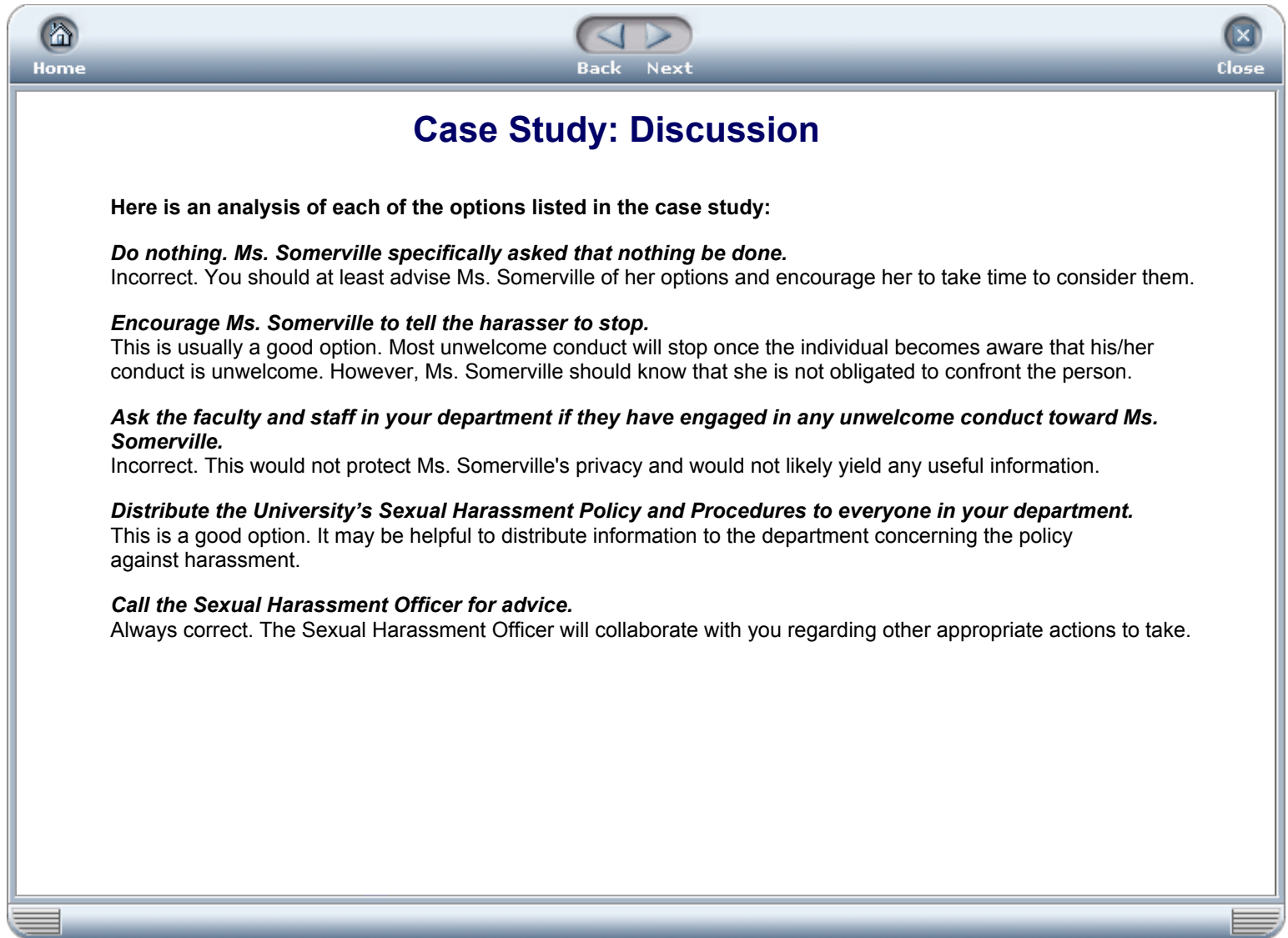
You are the Management Services Officer (MSO) of the Department of Mathematics. Late one Friday afternoon, one of your faculty members, Mary Somerville, tells you she is being sexually harassed by a colleague. She tells you she does not want anything to happen, but just wanted to vent to you. When you ask her for more information, she refuses to provide any specifics and will not tell you the name of the colleague

Which of the following actions should you take?
(You may select more than one option.)

- Do nothing. Ms. Somerville specifically asked that nothing be done.
- Encourage Ms. Somerville to tell the harasser to stop.
- Ask the faculty and staff in your department whether they have engaged in any unwelcome conduct toward Ms. Somerville.
- Distribute the University's Sexual Harassment Policy and Procedures to everyone in your department.
- Call the Sexual Harassment Officer for advice.

Several of these options MAY BE CORRECT depending upon the circumstances. Click the Next button to read an analysis of each of these options.





Home **Back** **Next** **Close**

Case Study: Discussion

Here is an analysis of each of the options listed in the case study:

Do nothing. Ms. Somerville specifically asked that nothing be done.
Incorrect. You should at least advise Ms. Somerville of her options and encourage her to take time to consider them.

Encourage Ms. Somerville to tell the harasser to stop.
This is usually a good option. Most unwelcome conduct will stop once the individual becomes aware that his/her conduct is unwelcome. However, Ms. Somerville should know that she is not obligated to confront the person.

Ask the faculty and staff in your department if they have engaged in any unwelcome conduct toward Ms. Somerville.
Incorrect. This would not protect Ms. Somerville's privacy and would not likely yield any useful information.

Distribute the University's Sexual Harassment Policy and Procedures to everyone in your department.
This is a good option. It may be helpful to distribute information to the department concerning the policy against harassment.

Call the Sexual Harassment Officer for advice.
Always correct. The Sexual Harassment Officer will collaborate with you regarding other appropriate actions to take.

Home Back Next Close


Key Case: Zabkowicz v. West Bend Co. (1984)

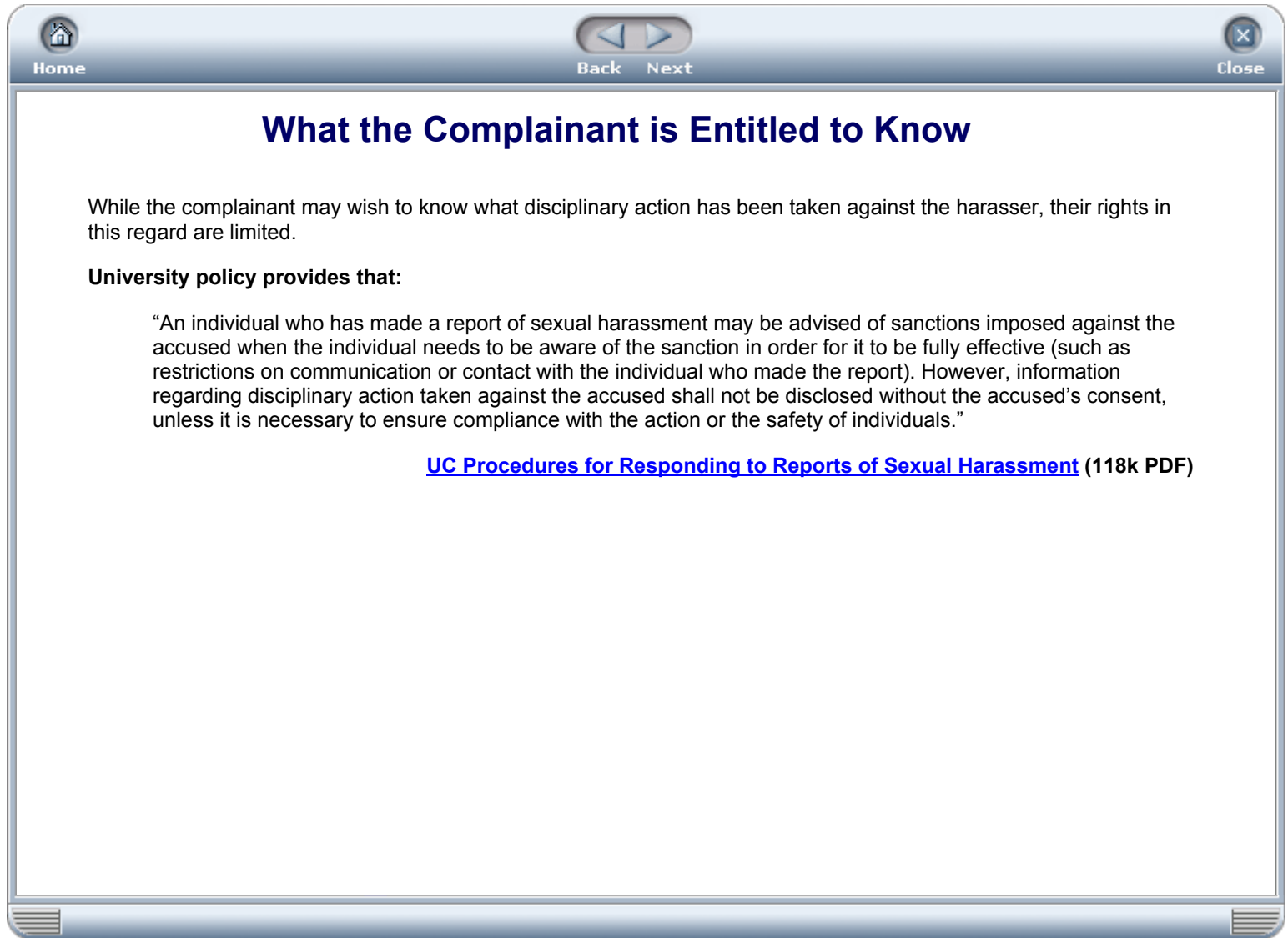
Carol Zabkowicz, a general warehouse worker, endured various forms of sexual harassment on the part of her co-workers for over four years. Her male co-workers would ask her if she was wearing a bra, expose their buttocks to her, grab their crotch in her presence. They used sexually charged foul language about her and towards her, and posted sexually oriented drawings and graphics around the warehouse.

After Zabkowicz's numerous complaints, her supervisor held a few meetings where he reminded employees of the company's policy against offensive conduct. The supervisor did not conduct an investigation or discipline any employees until Zabkowicz filed an EEOC charge.

The Court described the behaviors towards Zabkowicz as "malevolent" and "outrageous." Not surprisingly, the court held the employer liable because it failed to take immediate and appropriate corrective action.

Zabkowicz v. West Bend Co., 589 F. Supp. 780 (1984)





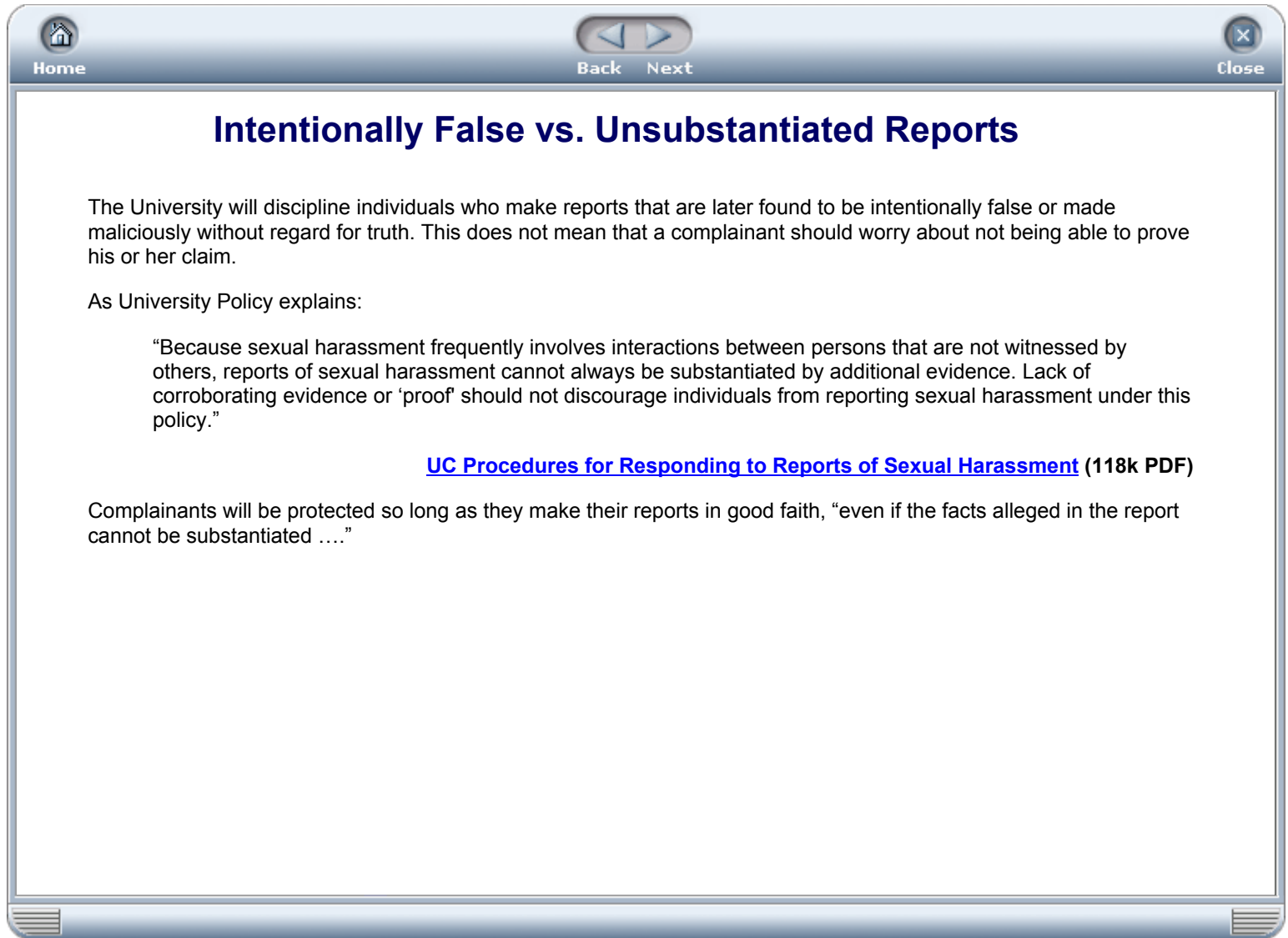
What the Complainant is Entitled to Know

While the complainant may wish to know what disciplinary action has been taken against the harasser, their rights in this regard are limited.

University policy provides that:

“An individual who has made a report of sexual harassment may be advised of sanctions imposed against the accused when the individual needs to be aware of the sanction in order for it to be fully effective (such as restrictions on communication or contact with the individual who made the report). However, information regarding disciplinary action taken against the accused shall not be disclosed without the accused’s consent, unless it is necessary to ensure compliance with the action or the safety of individuals.”

[UC Procedures for Responding to Reports of Sexual Harassment \(118k PDF\)](#)



Intentionally False vs. Unsubstantiated Reports

The University will discipline individuals who make reports that are later found to be intentionally false or made maliciously without regard for truth. This does not mean that a complainant should worry about not being able to prove his or her claim.

As University Policy explains:

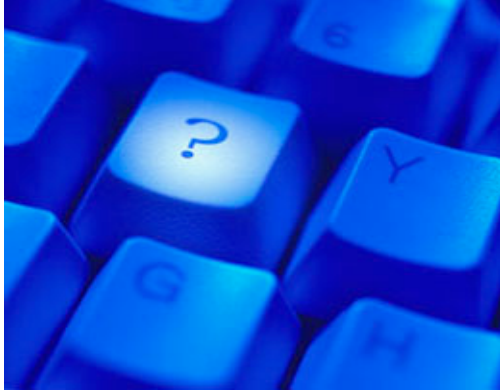
“Because sexual harassment frequently involves interactions between persons that are not witnessed by others, reports of sexual harassment cannot always be substantiated by additional evidence. Lack of corroborating evidence or ‘proof’ should not discourage individuals from reporting sexual harassment under this policy.”

[UC Procedures for Responding to Reports of Sexual Harassment \(118k PDF\)](#)

Complainants will be protected so long as they make their reports in good faith, “even if the facts alleged in the report cannot be substantiated”

Home Back Next Close

Check Your Understanding



True or False: Providing targeted training to the accused is an appropriate response to a charge of harassment.

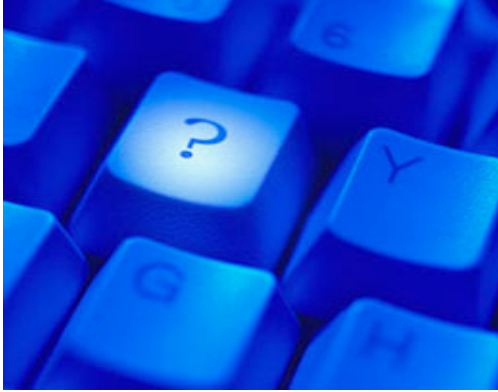
True

False

Submit

Home Back Next Close

Check Your Understanding



True or False: Providing targeted training to the accused is an appropriate response to a charge of harassment.

True **That MAY BE CORRECT.**
It may be appropriate to provide training to an individual who is found to have violated the sexual harassment policy. However, it also may be necessary to impose discipline on that person or take other actions depending on the facts. Click the Next button to continue.

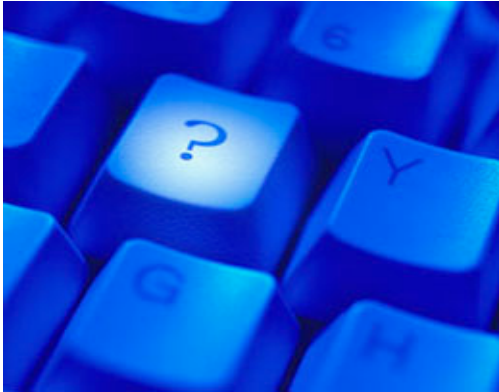
False

Home

Back Next

Close

Check Your Understanding



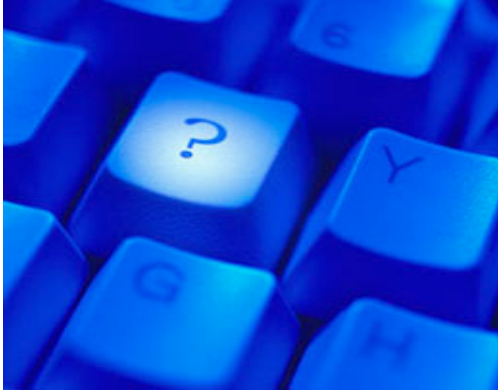
True or False: An individual who is named in a complaint has the right to know the name of his/her accuser.

True

False

Home Back Next Close

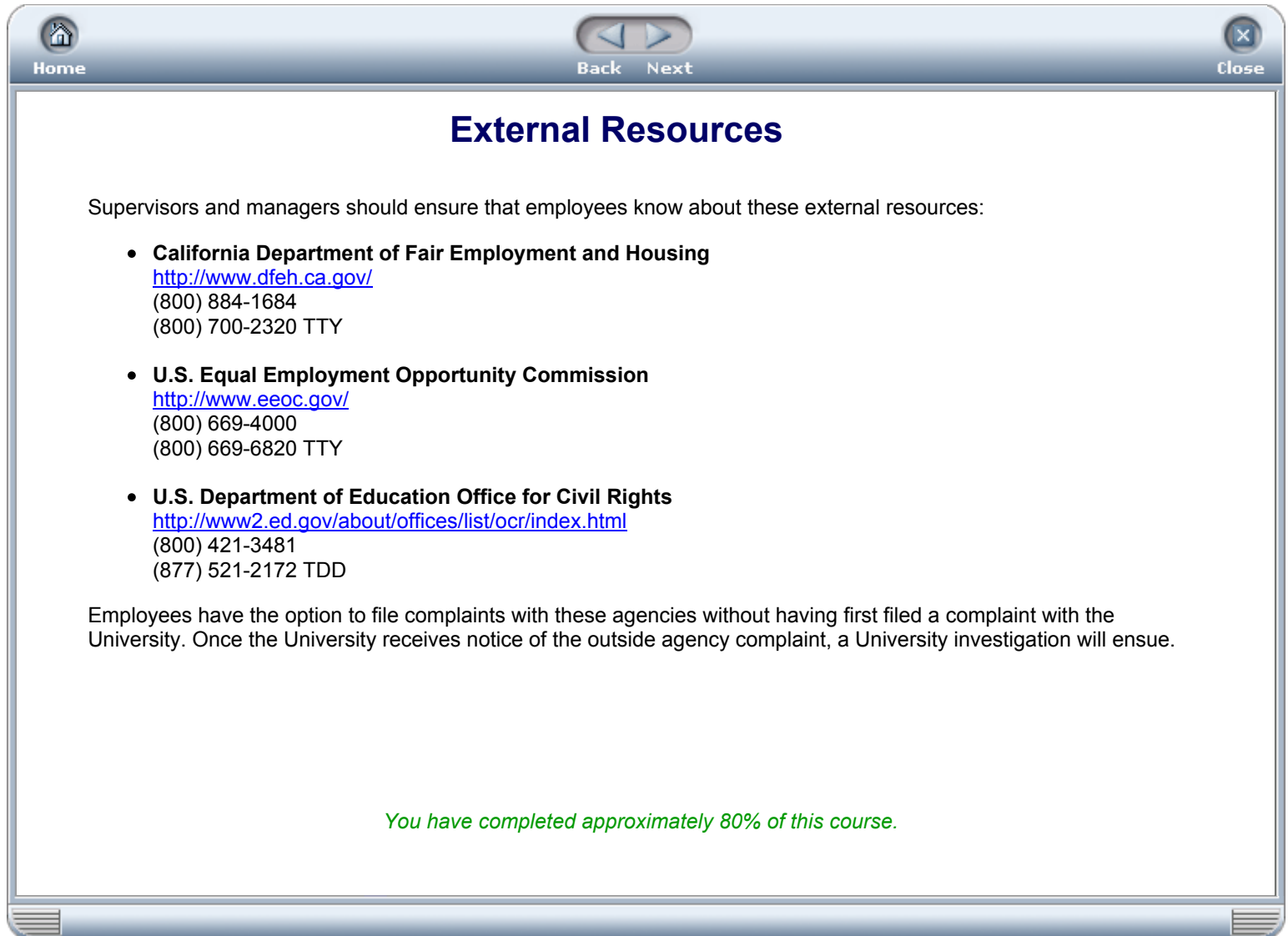
Check Your Understanding



True or False: An individual who is named in a complaint has the right to know the name of his/her accuser.

True **That MAY BE CORRECT.**

False The accused is entitled to a copy of the complaint or a full and complete written statement of the allegations so that he or she can adequately address the accusations. In most, but not all, cases this will include the right to know the identity of the accuser. Click the Next button to continue.



External Resources

Supervisors and managers should ensure that employees know about these external resources:


- **California Department of Fair Employment and Housing**
<http://www.dfeh.ca.gov/>
(800) 884-1684
(800) 700-2320 TTY
- **U.S. Equal Employment Opportunity Commission**
<http://www.eeoc.gov/>
(800) 669-4000
(800) 669-6820 TTY
- **U.S. Department of Education Office for Civil Rights**
<http://www2.ed.gov/about/offices/list/ocr/index.html>
(800) 421-3481
(877) 521-2172 TDD

Employees have the option to file complaints with these agencies without having first filed a complaint with the University. Once the University receives notice of the outside agency complaint, a University investigation will ensue.

You have completed approximately 80% of this course.

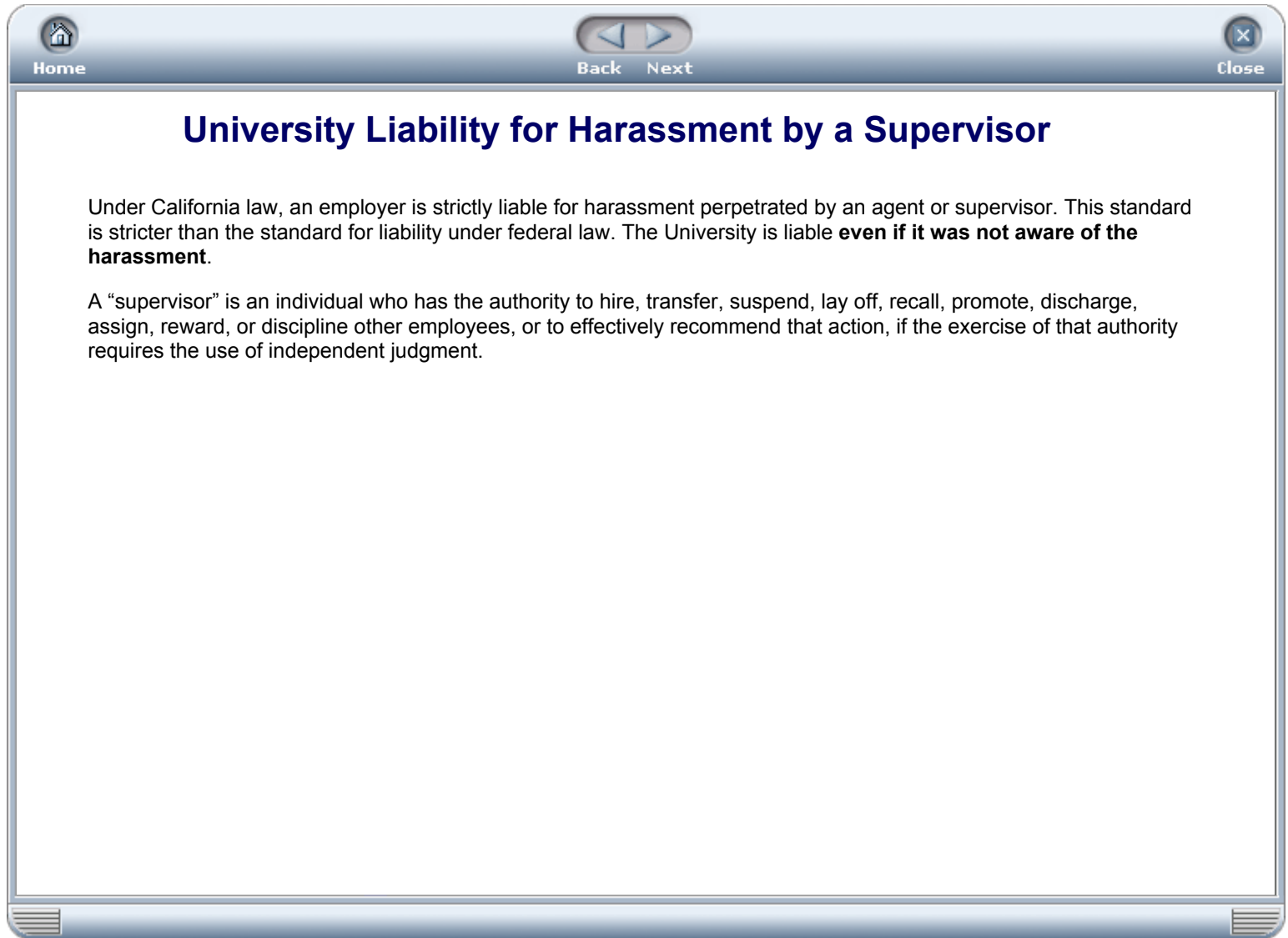
Home Back Next Close

Avoiding Liability



The most effective way to avoid harassment lawsuits is to prevent harassment from happening in the first place.

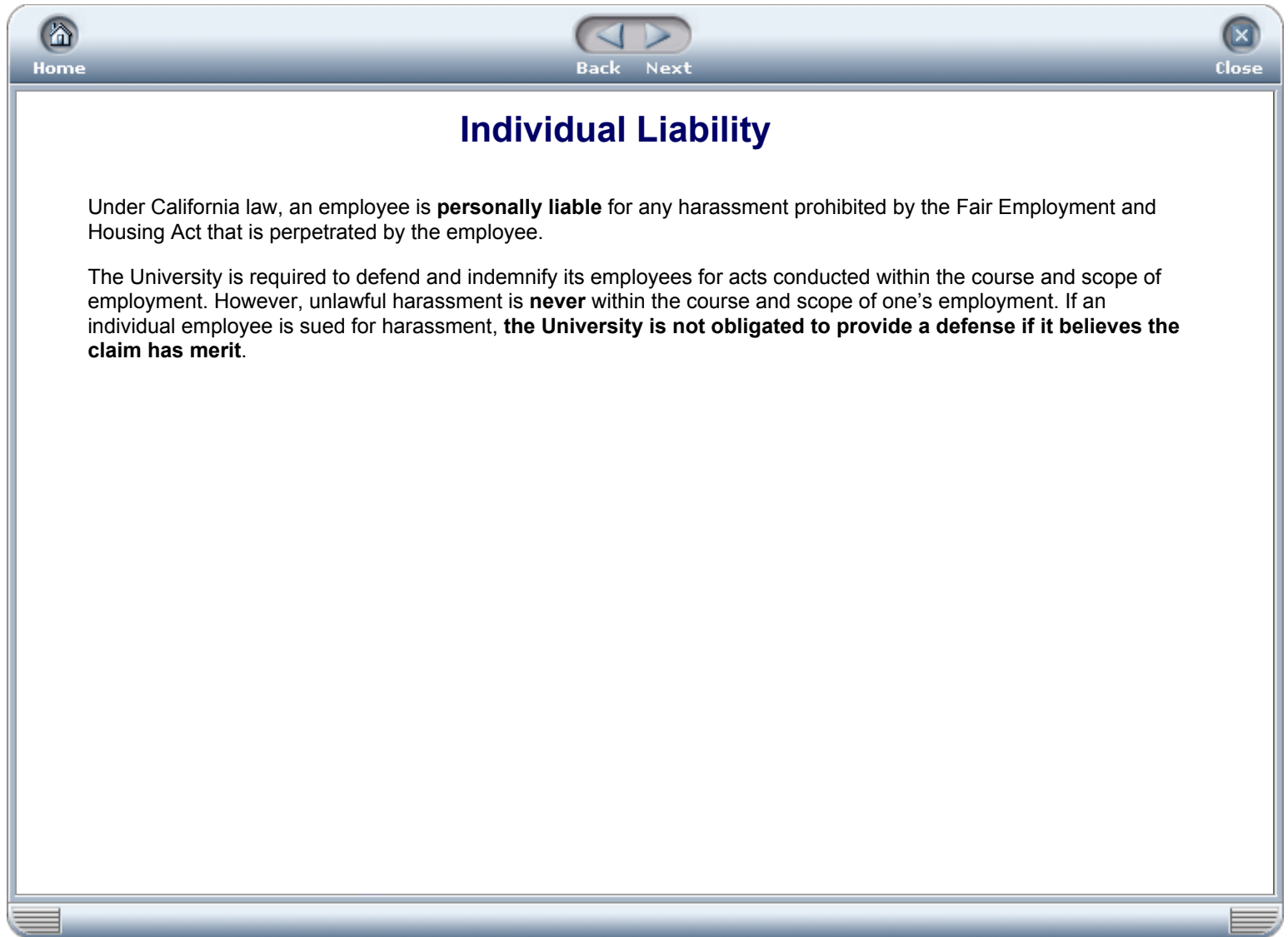
The previous modules have discussed the ways in which University employees can assist in ensuring a respectful workplace for all. However, since harassment claims are brought against the University with some regularity it is important to know the rules concerning liability.



University Liability for Harassment by a Supervisor

Under California law, an employer is strictly liable for harassment perpetrated by an agent or supervisor. This standard is stricter than the standard for liability under federal law. The University is liable **even if it was not aware of the harassment**.

A “supervisor” is an individual who has the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or to effectively recommend that action, if the exercise of that authority requires the use of independent judgment.



Home Back Next Close

Individual Liability

Under California law, an employee is **personally liable** for any harassment prohibited by the Fair Employment and Housing Act that is perpetrated by the employee.

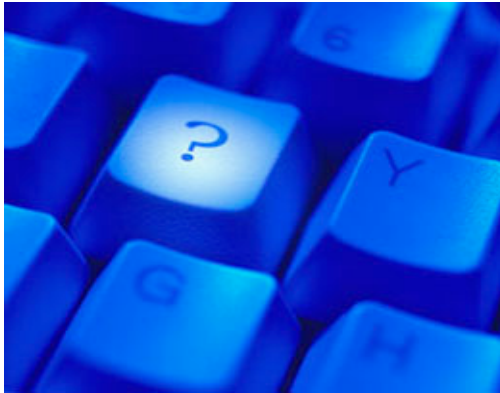
The University is required to defend and indemnify its employees for acts conducted within the course and scope of employment. However, unlawful harassment is **never** within the course and scope of one's employment. If an individual employee is sued for harassment, **the University is not obligated to provide a defense if it believes the claim has merit.**

Home

Back Next

Close

Check Your Understanding



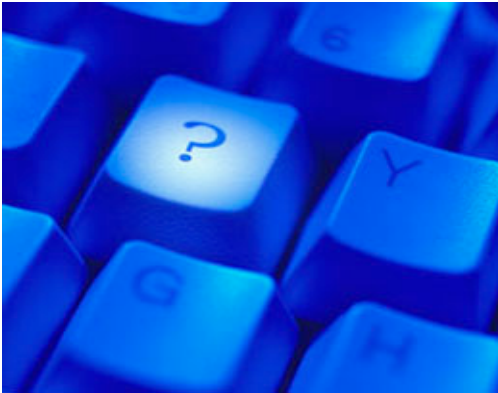
True or False: In order to be deemed a “supervisor,” it is enough that an individual has input concerning an employee’s evaluation.

True
 False

Submit

Home Back Next Close

Check Your Understanding



True or False: In order to be deemed a “supervisor,” it is enough that an individual has input concerning an employee’s evaluation.

True **That is CORRECT.**
“Supervisors” include those who have the power to recommend actions that impact an employee’s terms and conditions of employment. Click the Next button to continue.


False

Home

Back Next

Close

Check Your Understanding



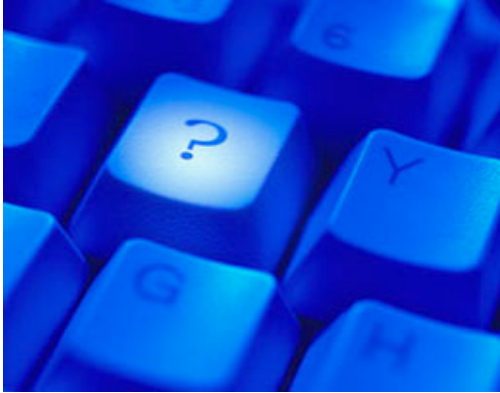
True or False: If a vendor sexually harasses an employee, the University's liability depends on whether the University was aware of the harassment and failed to act.

True
 False

Submit

Home Back Next Close

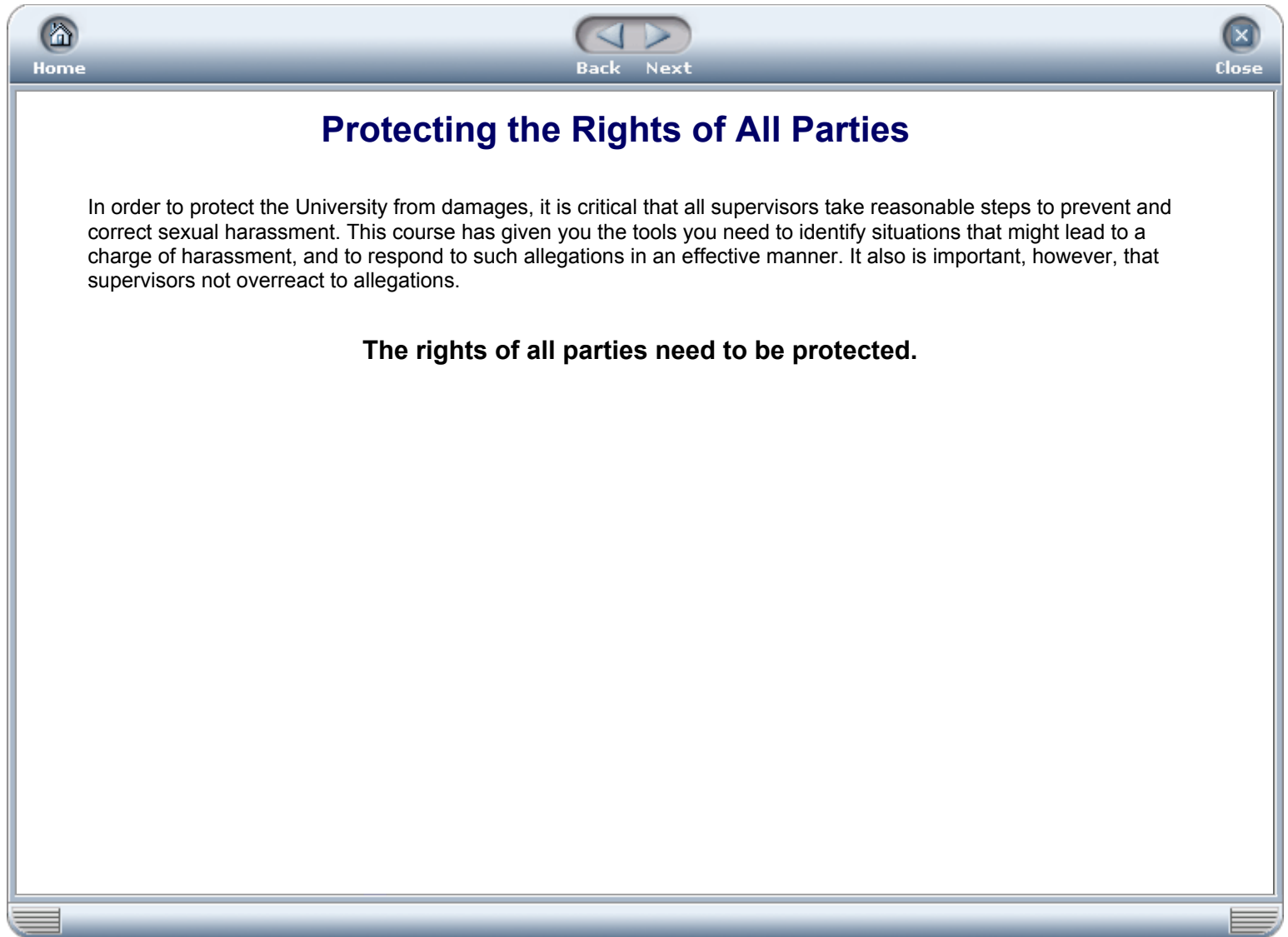
Check Your Understanding



True or False: If a vendor sexually harasses an employee, the University's liability depends on whether the University was aware of the harassment and failed to act.

True **That is CORRECT.**
Liability for harassment of an employee by any third party will depend on the University's knowledge of and response to the allegations of harassment.
Click the Next button to continue.

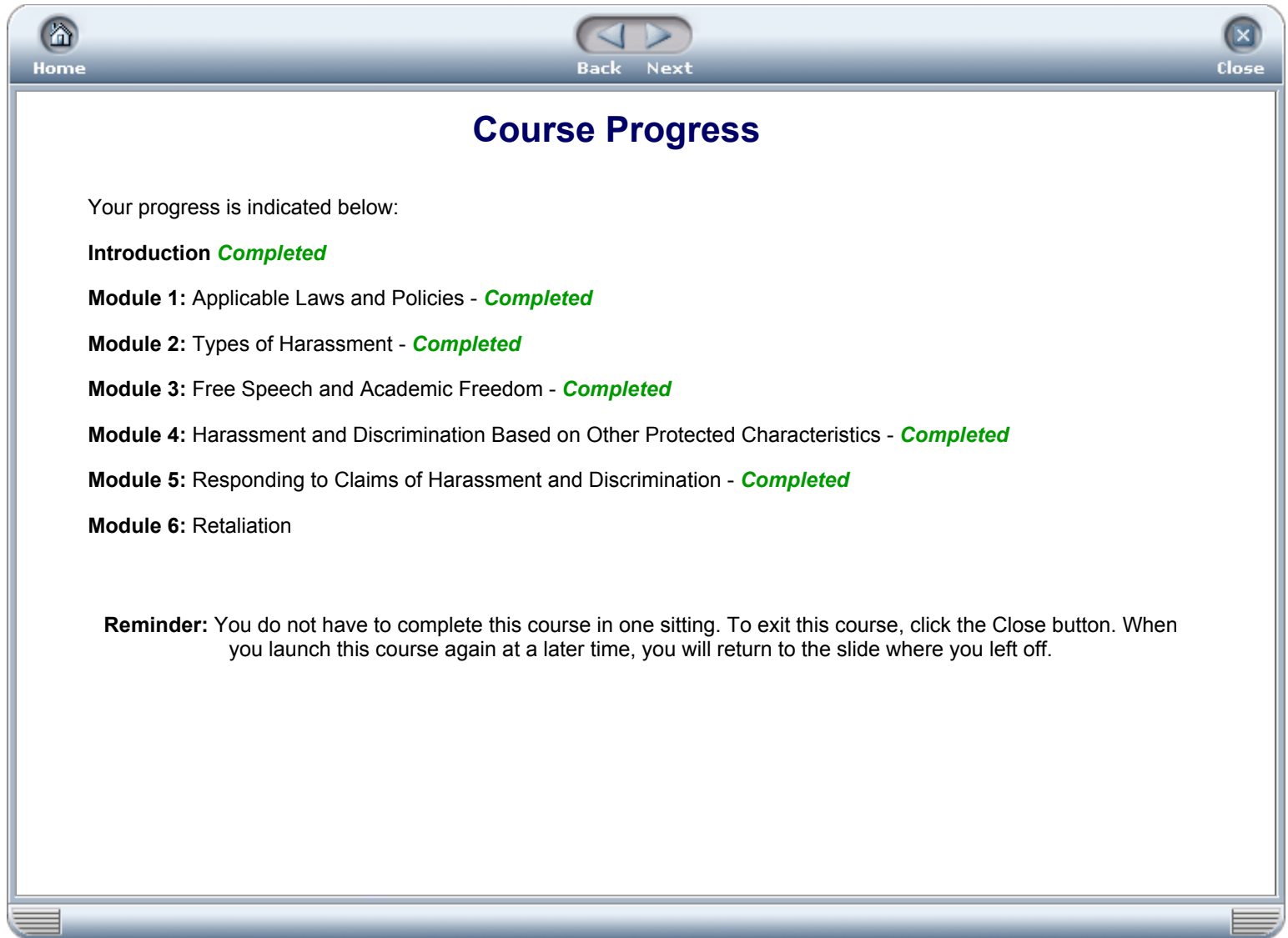
False



Protecting the Rights of All Parties

In order to protect the University from damages, it is critical that all supervisors take reasonable steps to prevent and correct sexual harassment. This course has given you the tools you need to identify situations that might lead to a charge of harassment, and to respond to such allegations in an effective manner. It also is important, however, that supervisors not overreact to allegations.

The rights of all parties need to be protected.



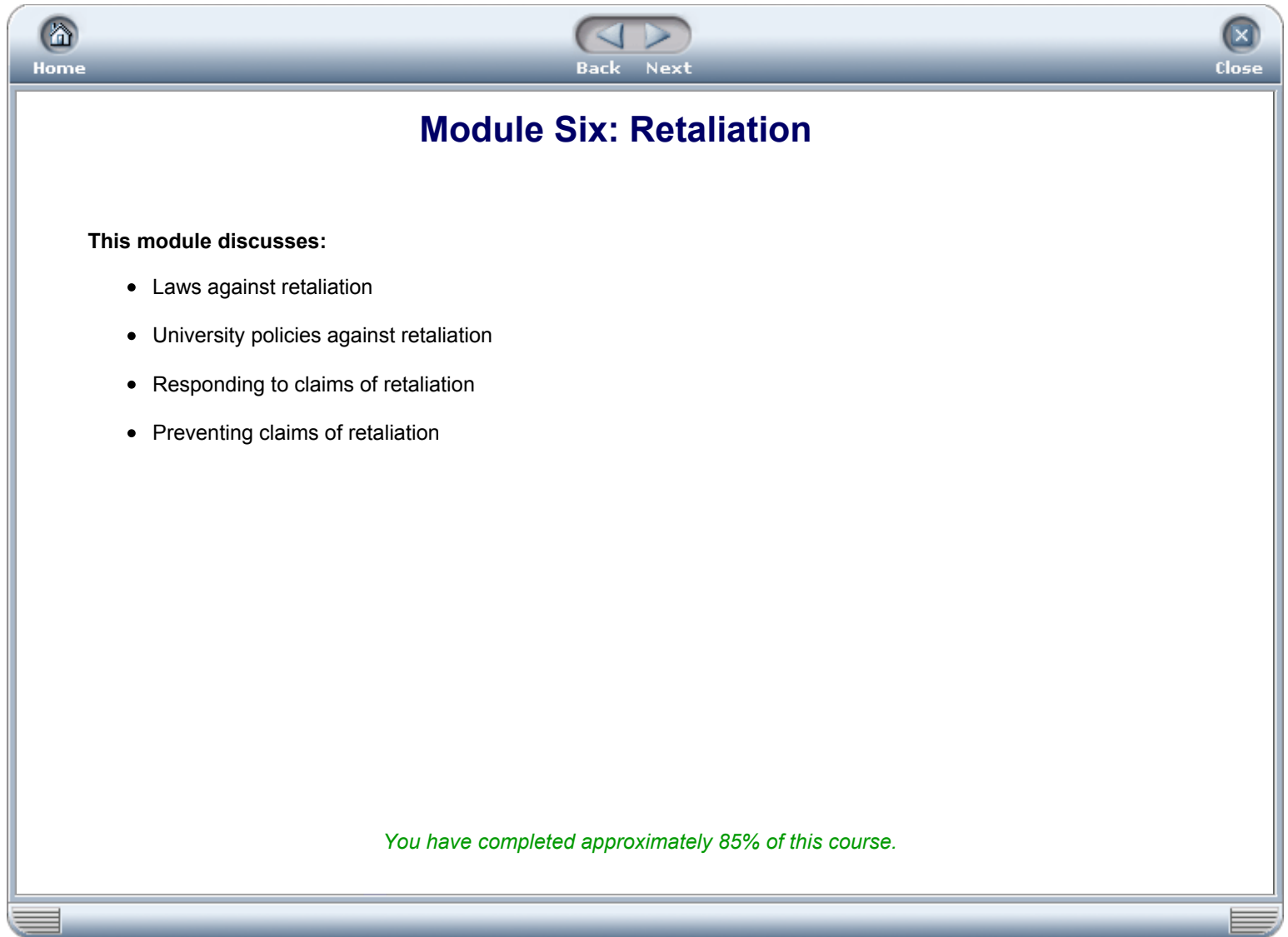
Home Back Next Close

Course Progress

Your progress is indicated below:

- Introduction **Completed**
- Module 1: Applicable Laws and Policies - **Completed**
- Module 2: Types of Harassment - **Completed**
- Module 3: Free Speech and Academic Freedom - **Completed**
- Module 4: Harassment and Discrimination Based on Other Protected Characteristics - **Completed**
- Module 5: Responding to Claims of Harassment and Discrimination - **Completed**
- Module 6: Retaliation

Reminder: You do not have to complete this course in one sitting. To exit this course, click the Close button. When you launch this course again at a later time, you will return to the slide where you left off.



Module Six: Retaliation

This module discusses:

- Laws against retaliation
- University policies against retaliation
- Responding to claims of retaliation
- Preventing claims of retaliation

You have completed approximately 85% of this course.

About Retaliation

As we have discussed previously, a person who files a complaint of sexual harassment or discrimination has the right to be free from retaliation, regardless of the outcome of the claim.

The number of retaliation charges is increasing. In 1997, retaliation charges constituted 23% of all charges filed with the EEOC. In 2007, retaliation charges were 32% of the EEOC's total charges. Retaliation was the most frequent claim at the national level in 2010, edging out race discrimination claims for the first time.

[EEOC Statistics](#)

As a supervisor, you play an important role in ensuring that employees who file complaints are not subjected to retaliation. This module will help you understand what actions constitute retaliation, and how retaliation claims are analyzed under the applicable laws and University policies.


Additional Reading: EEOC Compliance Manual: [Retaliation](#)

Home Back Next Close

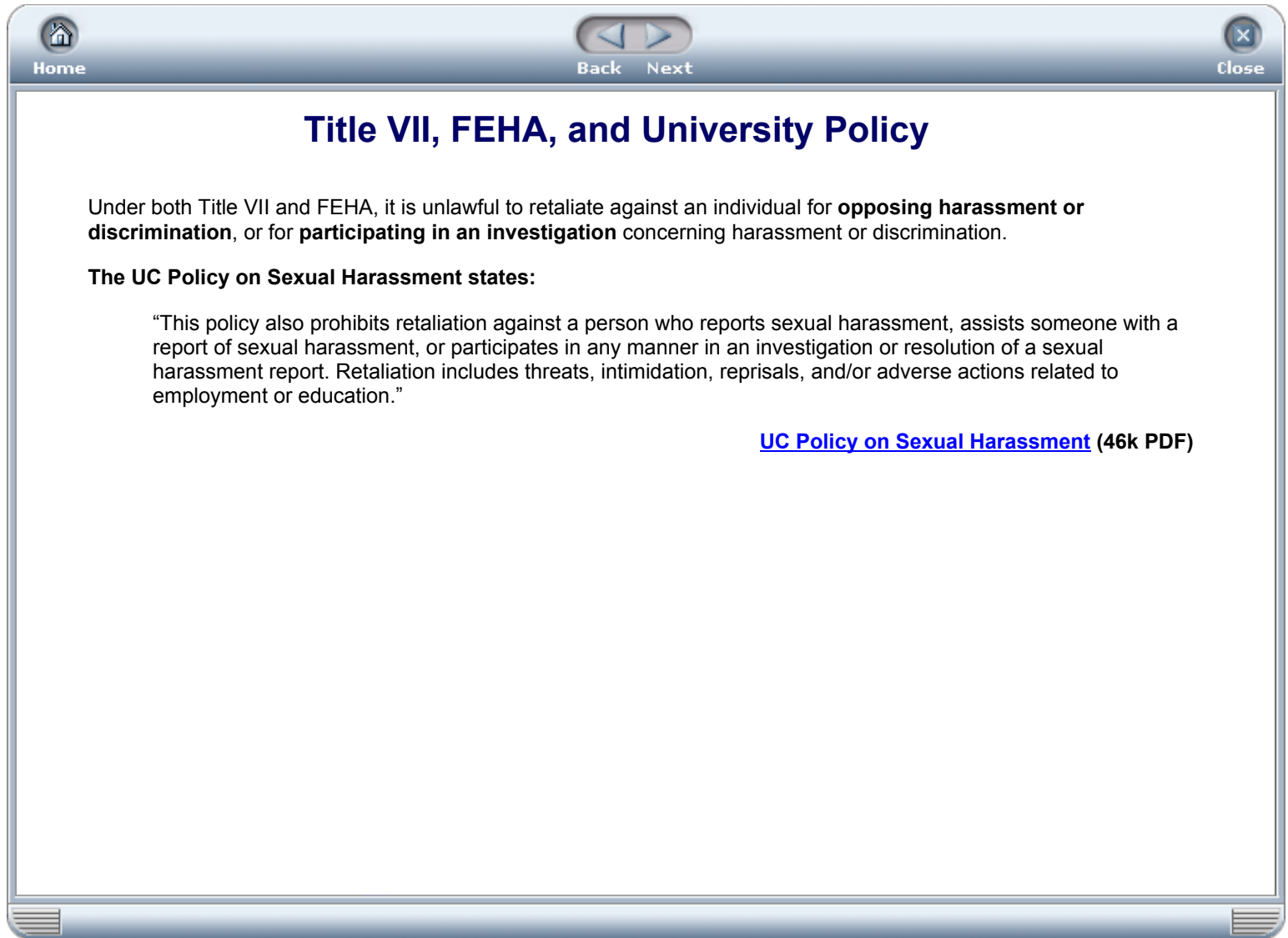
Laws and Policies against Retaliation

Two of the anti-discrimination acts we have previously discussed, **Title VII of the Civil Rights Act** and the **California Fair Employment and Housing Act (FEHA)**, along with the **California Whistleblower Protection Act** protect individuals from retaliation for filing a complaint of harassment or discrimination.

University policy echoes these protections. Although there is some overlap among these laws, there also are important differences: different standards and processes apply depending on which law and related University policy the complainant invokes.



The image shows a set of keys with a silver ring and a white keychain. The keys are arranged in a cluster, with one key having a white keychain attached. The background is a plain, light color.



Title VII, FEHA, and University Policy

Under both Title VII and FEHA, it is unlawful to retaliate against an individual for **opposing harassment or discrimination**, or for **participating in an investigation** concerning harassment or discrimination.

The UC Policy on Sexual Harassment states:

“This policy also prohibits retaliation against a person who reports sexual harassment, assists someone with a report of sexual harassment, or participates in any manner in an investigation or resolution of a sexual harassment report. Retaliation includes threats, intimidation, reprisals, and/or adverse actions related to employment or education.”

[UC Policy on Sexual Harassment](#) (46k PDF)


Home Back Next Close

Key Case: Crawford v. Metropolitan Government of Nashville & Davidson County (2009)

Vickie Crawford worked for Metro Nashville for 30 years. Several Metro employees complained about a manager's conduct, and the complaints were investigated. The investigator interviewed employees, including Crawford. Subsequently, Crawford was terminated and then filed a lawsuit.

The Supreme Court held that it is unlawful for an employer to discriminate against an employee who has opposed any employment practice prohibited by Title VII. The Court reasoned that the protection extends to an employee who speaks out about discrimination not only on her own initiative, but also in answering questions during an employer's internal investigation.

The United States Supreme Court ruled that employees who participate in an organization's internal investigations into allegations of violations of Title VII are protected from retaliation.



Crawford v. Metropolitan Government of Nashville & Davidson County, 129 S.Ct. 846 (2009).

The California Whistleblower Protection Act

The California Whistleblower Protection Act provides:

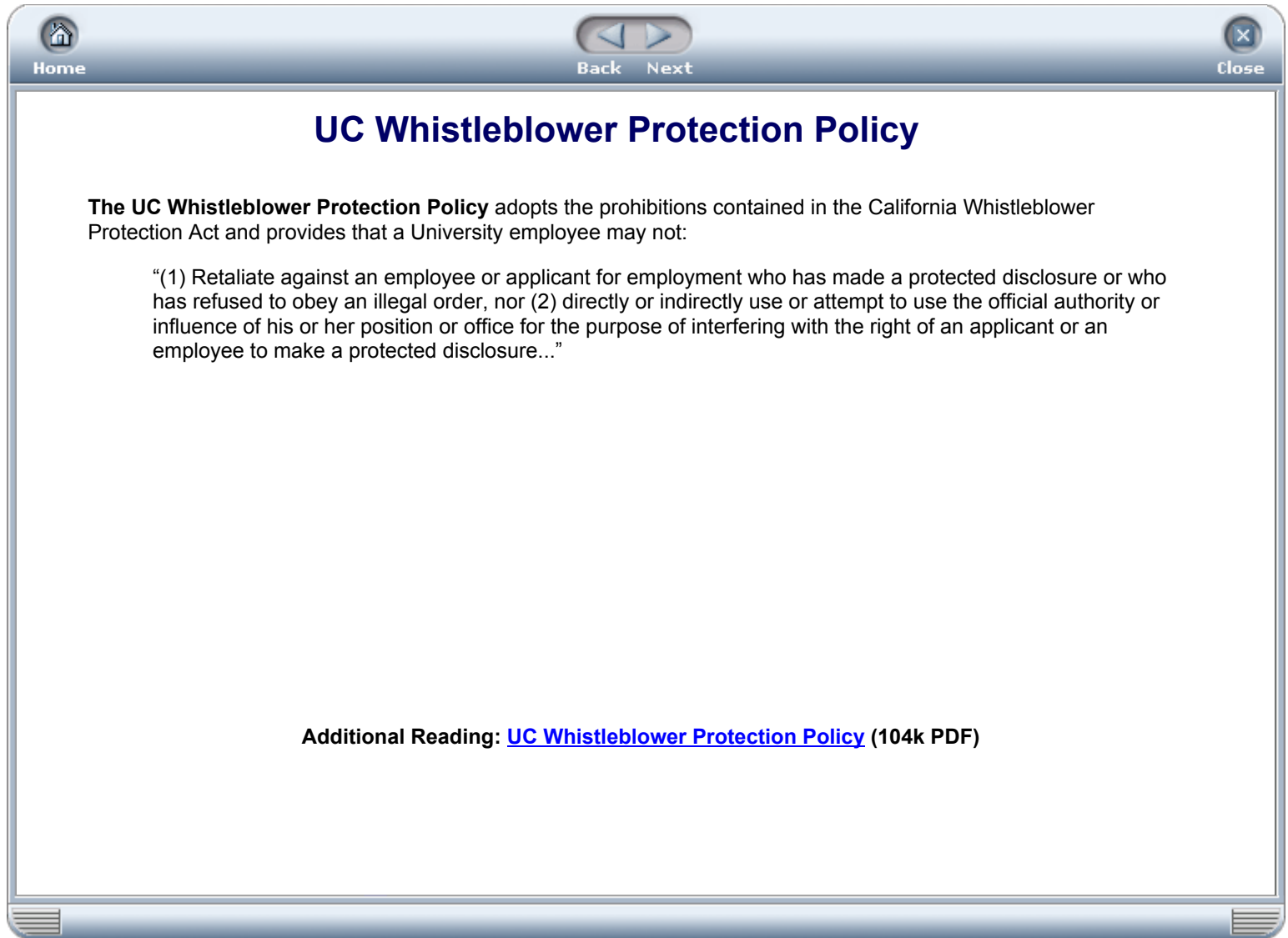
“The Legislature finds and declares that state employees should be free to report waste, fraud, abuse of authority, violation of law, or threat to public health without fear of retribution. The Legislature further finds and declares that public servants best serve the citizenry when they can be candid and honest without reservation in conducting the people's business.”

Govt. Code Section 8547.1

“Any person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a University of California employee, including an officer or faculty member, or applicant for employment for having made a protected disclosure, **is subject to a fine not to exceed ten thousand dollars (\$10,000) and imprisonment in the county jail for up to a period of one year.**”

Govt. Code Section 8547.10(b)

Additional Reading: [California Whistleblower Protection Act](#)

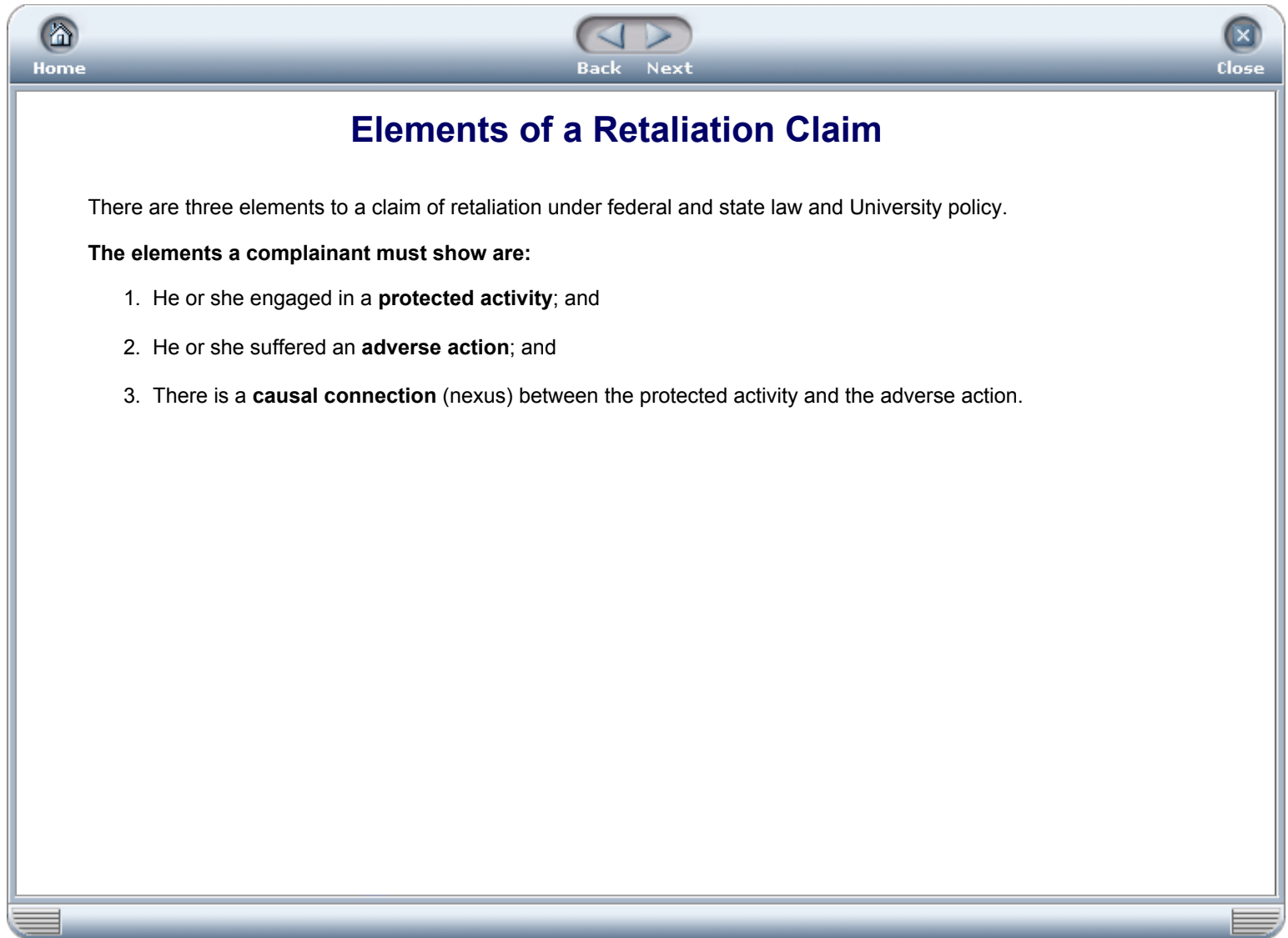


UC Whistleblower Protection Policy

The UC Whistleblower Protection Policy adopts the prohibitions contained in the California Whistleblower Protection Act and provides that a University employee may not:

“(1) Retaliate against an employee or applicant for employment who has made a protected disclosure or who has refused to obey an illegal order, nor (2) directly or indirectly use or attempt to use the official authority or influence of his or her position or office for the purpose of interfering with the right of an applicant or an employee to make a protected disclosure...”

Additional Reading: [UC Whistleblower Protection Policy](#) (104k PDF)



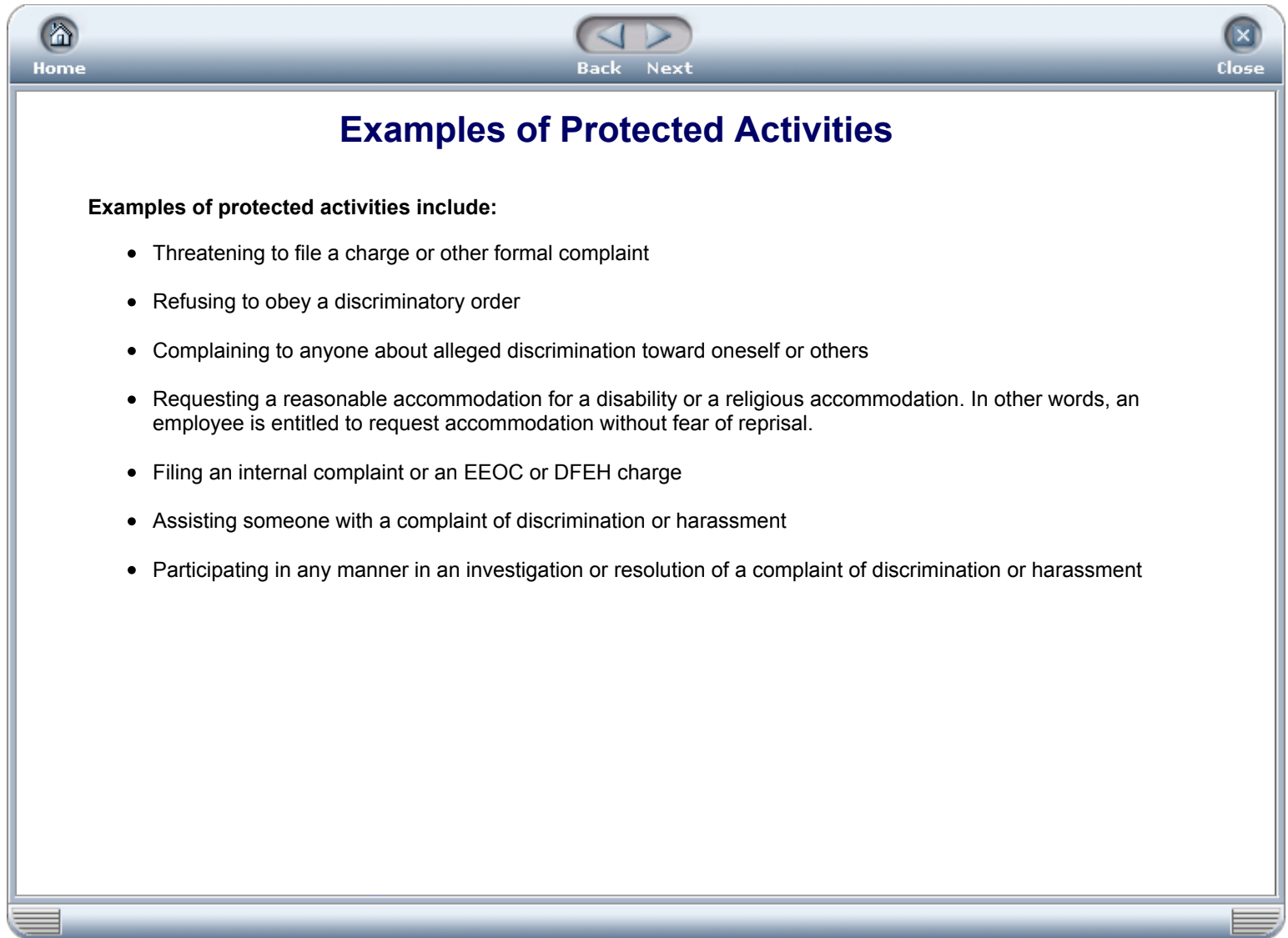
Home Back Next Close

Elements of a Retaliation Claim

There are three elements to a claim of retaliation under federal and state law and University policy.

The elements a complainant must show are:

1. He or she engaged in a **protected activity**; and
2. He or she suffered an **adverse action**; and
3. There is a **causal connection** (nexus) between the protected activity and the adverse action.



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Examples of Protected Activities

Examples of protected activities include:

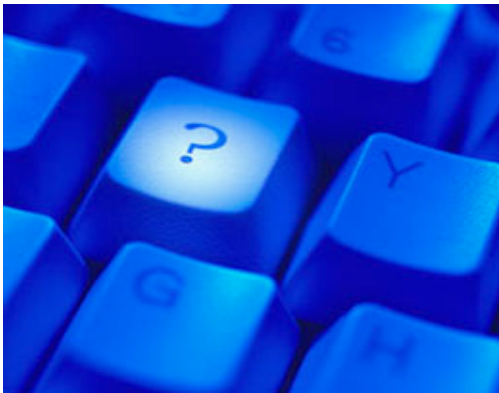
- Threatening to file a charge or other formal complaint
- Refusing to obey a discriminatory order
- Complaining to anyone about alleged discrimination toward oneself or others
- Requesting a reasonable accommodation for a disability or a religious accommodation. In other words, an employee is entitled to request accommodation without fear of reprisal.
- Filing an internal complaint or an EEOC or DFEH charge
- Assisting someone with a complaint of discrimination or harassment
- Participating in any manner in an investigation or resolution of a complaint of discrimination or harassment

Home

Back Next

Close

Check Your Understanding



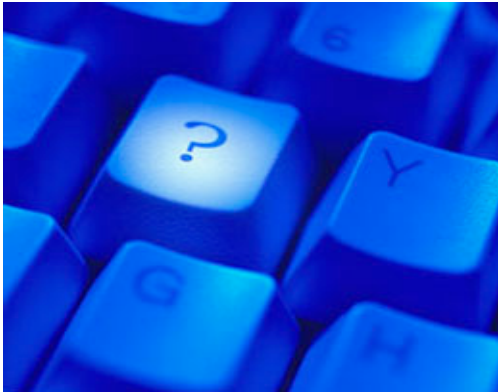
An applicant for employment alleges that she was denied the position because of her gender. Her complaint is investigated and found to be without merit. You are then contacted by a colleague on another UC campus who asks you about hiring this individual.

Should you discourage your colleague from hiring this applicant because she is known to make unsubstantiated claims?

Yes
 No

Home Back Next Close

Check Your Understanding



An applicant for employment alleges that she was denied the position because of her gender. Her complaint is investigated and found to be without merit. You are then contacted by a colleague on another UC campus who asks you about hiring this individual.

Should you discourage your colleague from hiring this applicant because she is known to make unsubstantiated claims?

Yes **That is CORRECT.** You should not discourage your colleague from hiring this person on the basis of the unsubstantiated discrimination charge because an unsubstantiated complaint is not necessarily made in bad faith. Applicants and employees are protected from retaliation for filing a charge of discrimination. Click the Next button to continue.

No

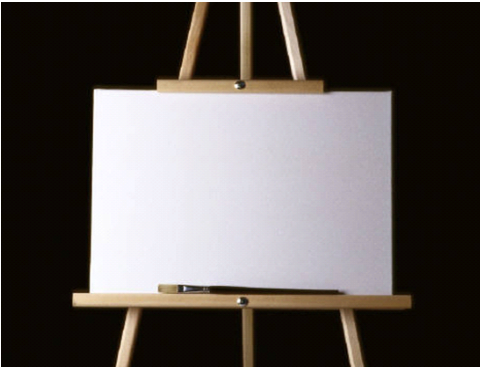
Home

Back Next

Close

Case Study: Masterpiece v. Picasso, Part 1

Marc Masterpiece, an art student, has difficulty working in the same studio space with Professor Pablo Picasso, his academic advisor who also supervises his part-time work-study in the studio. Marc is also enrolled in one of Professor Picasso's courses for the semester. Marc complains to the department chair about Professor Picasso, claiming that he is disorganized, loud, somewhat depressed and sloppy.



Has Mr. Masterpiece made a protected disclosure?

Yes


No

Submit

Home Back Next Close

Case Study: Masterpiece v. Picasso, Part 1

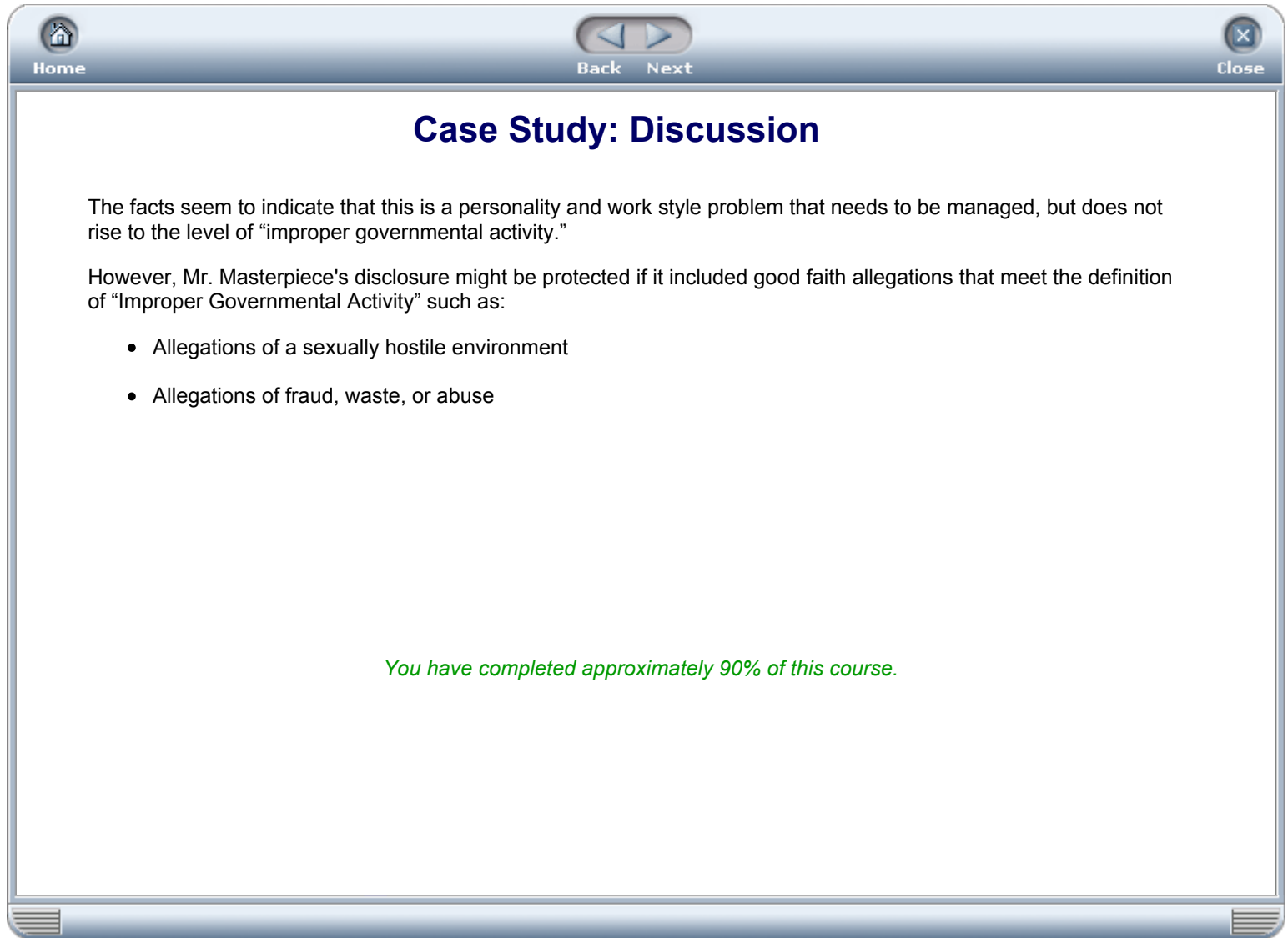
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Has Mr. Masterpiece made a protected disclosure?

Yes **That is probably CORRECT.**
Click the Next button to read a discussion of this case study.

No



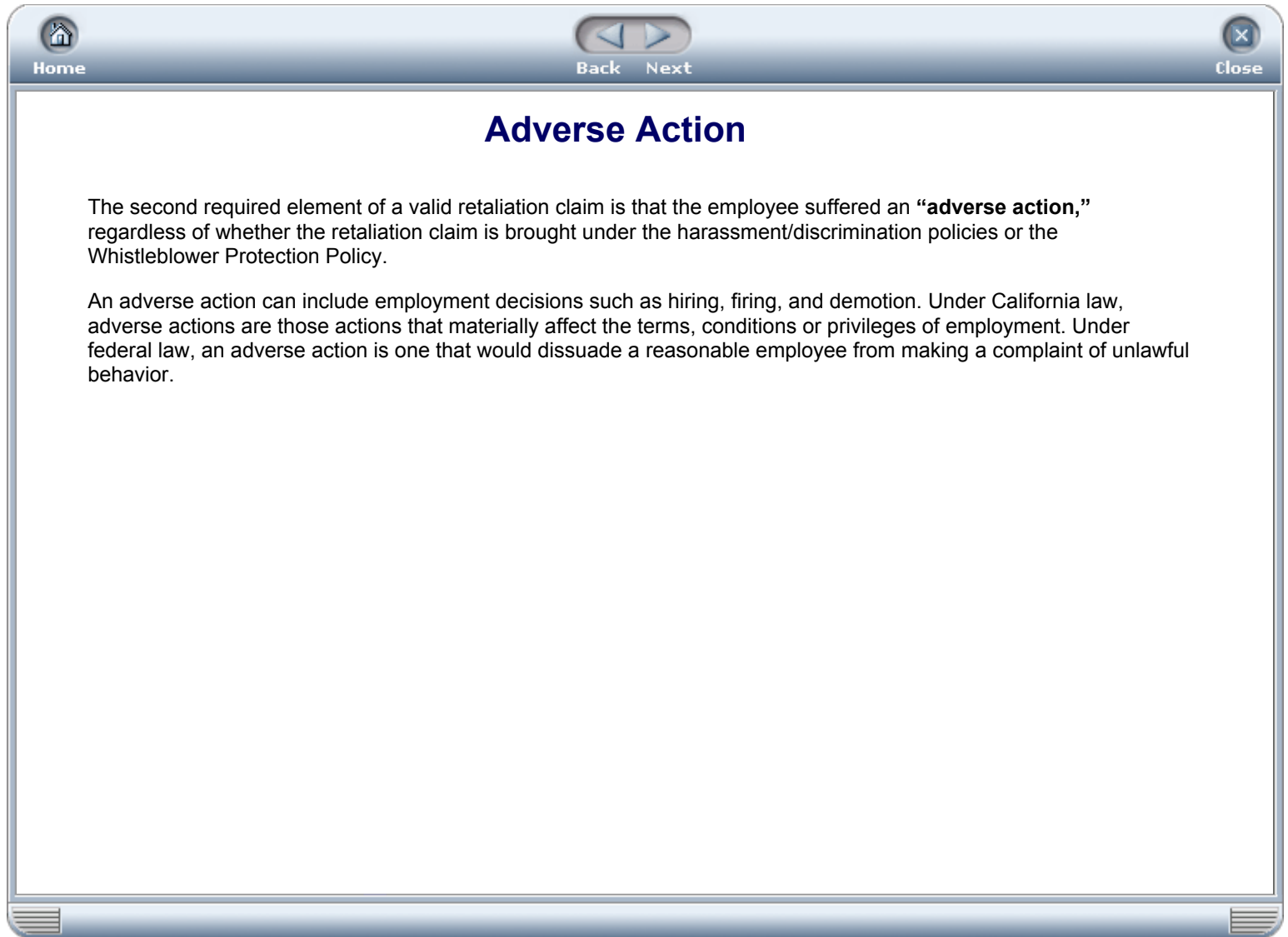
Case Study: Discussion

The facts seem to indicate that this is a personality and work style problem that needs to be managed, but does not rise to the level of "improper governmental activity."

However, Mr. Masterpiece's disclosure might be protected if it included good faith allegations that meet the definition of "Improper Governmental Activity" such as:

- Allegations of a sexually hostile environment
- Allegations of fraud, waste, or abuse

You have completed approximately 90% of this course.



Home Back Next Close

Adverse Action

The second required element of a valid retaliation claim is that the employee suffered an **“adverse action,”** regardless of whether the retaliation claim is brought under the harassment/discrimination policies or the Whistleblower Protection Policy.


An adverse action can include employment decisions such as hiring, firing, and demotion. Under California law, adverse actions are those actions that materially affect the terms, conditions or privileges of employment. Under federal law, an adverse action is one that would dissuade a reasonable employee from making a complaint of unlawful behavior.

HomeBack NextClose

Case Study: Masterpiece v. Picasso, Part 2

Marc Masterpiece's allegations against Professor Picasso included claims that Professor Picasso was making unwelcome sexual advances toward a female graduate student. Professor Picasso was informed of the charges and has been questioned in an investigation over the past few months.

Mr. Masterpiece filed a retaliation claim alleging that because of his report of Professor Picasso's improper conduct, he was given a poor performance review and was told that his art is flat, dull and unimpressive. Mr. Masterpiece further alleges that Professor Picasso advised him that he is in danger of failing Professor Picasso's class this semester.



Are the actions alleged on the part of Professor Picasso considered "adverse actions" that could support Mr. Masterpiece's claim of retaliation?

Yes


No

HomeBack NextClose

Case Study: Masterpiece v. Picasso, Part 2

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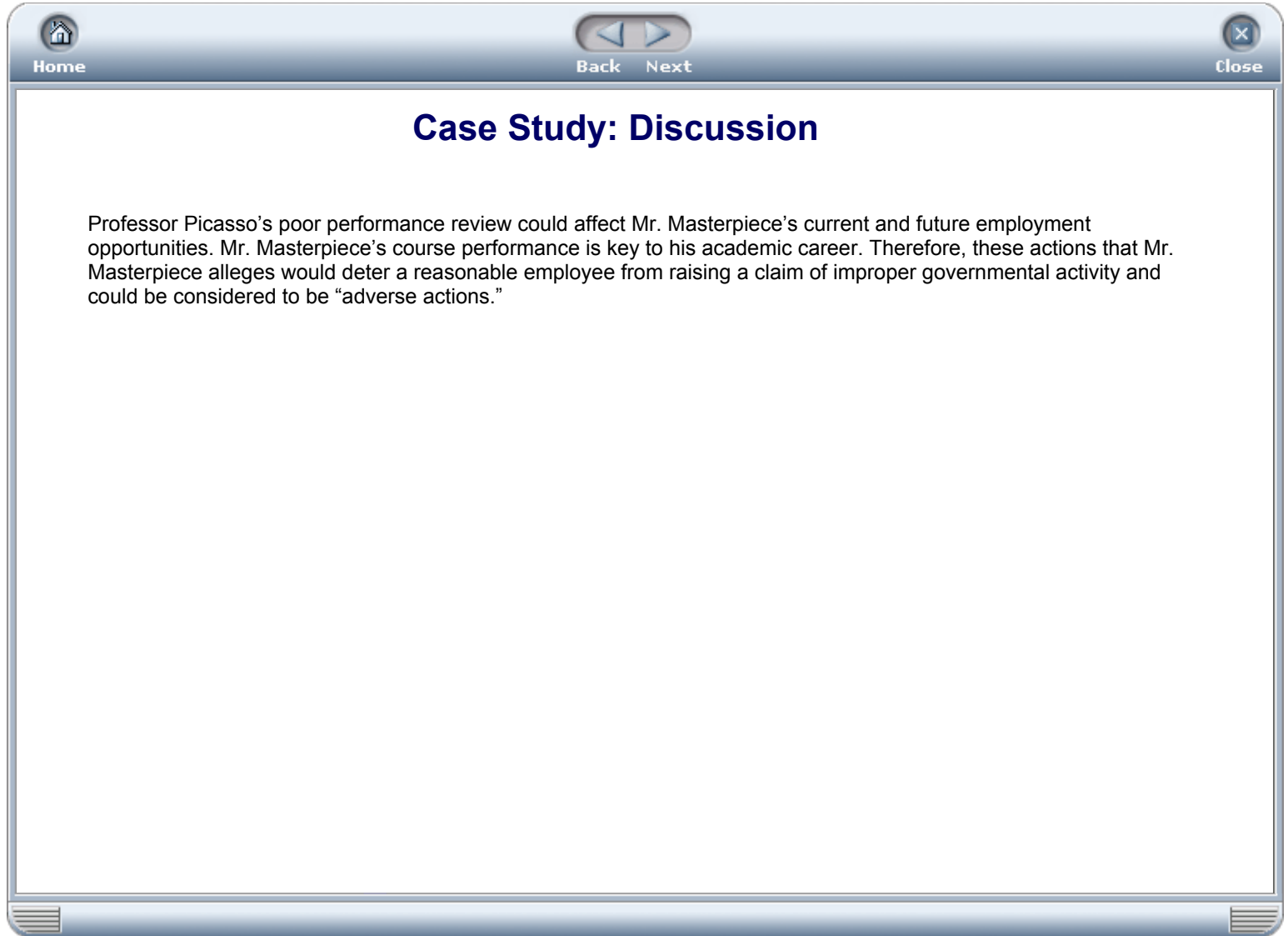
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Are the actions alleged on the part of Professor Picasso considered "adverse actions" that could support Mr. Masterpiece's claim of retaliation?

Yes **That is CORRECT.**

No **Click the Next button to read a discussion of this case study.**



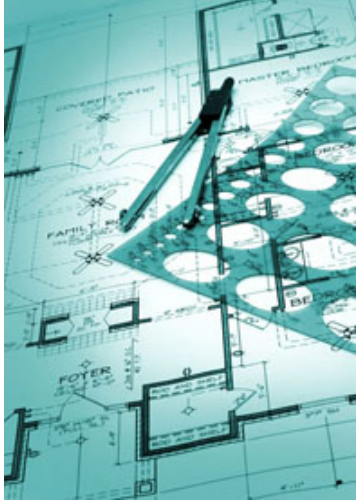
Case Study: Discussion

Professor Picasso's poor performance review could affect Mr. Masterpiece's current and future employment opportunities. Mr. Masterpiece's course performance is key to his academic career. Therefore, these actions that Mr. Masterpiece alleges would deter a reasonable employee from raising a claim of improper governmental activity and could be considered to be "adverse actions."

HomeBack NextClose

Case Study: Bobby Blueprint

Bobby Blueprint is an assistant in the Department of Architecture. He filed a complaint alleging that he was racially harassed by his supervisor and co-workers. After learning about the complaint, Mr. Blueprint's supervisor asked two employees to keep Mr. Blueprint under surveillance and report back about his activities.



Could this be considered "adverse action"?

Yes

No

Submit



Home



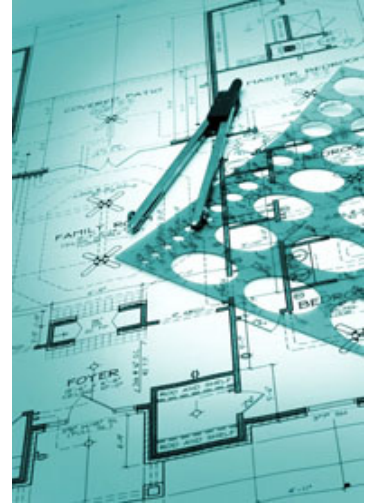
Back Next



Close

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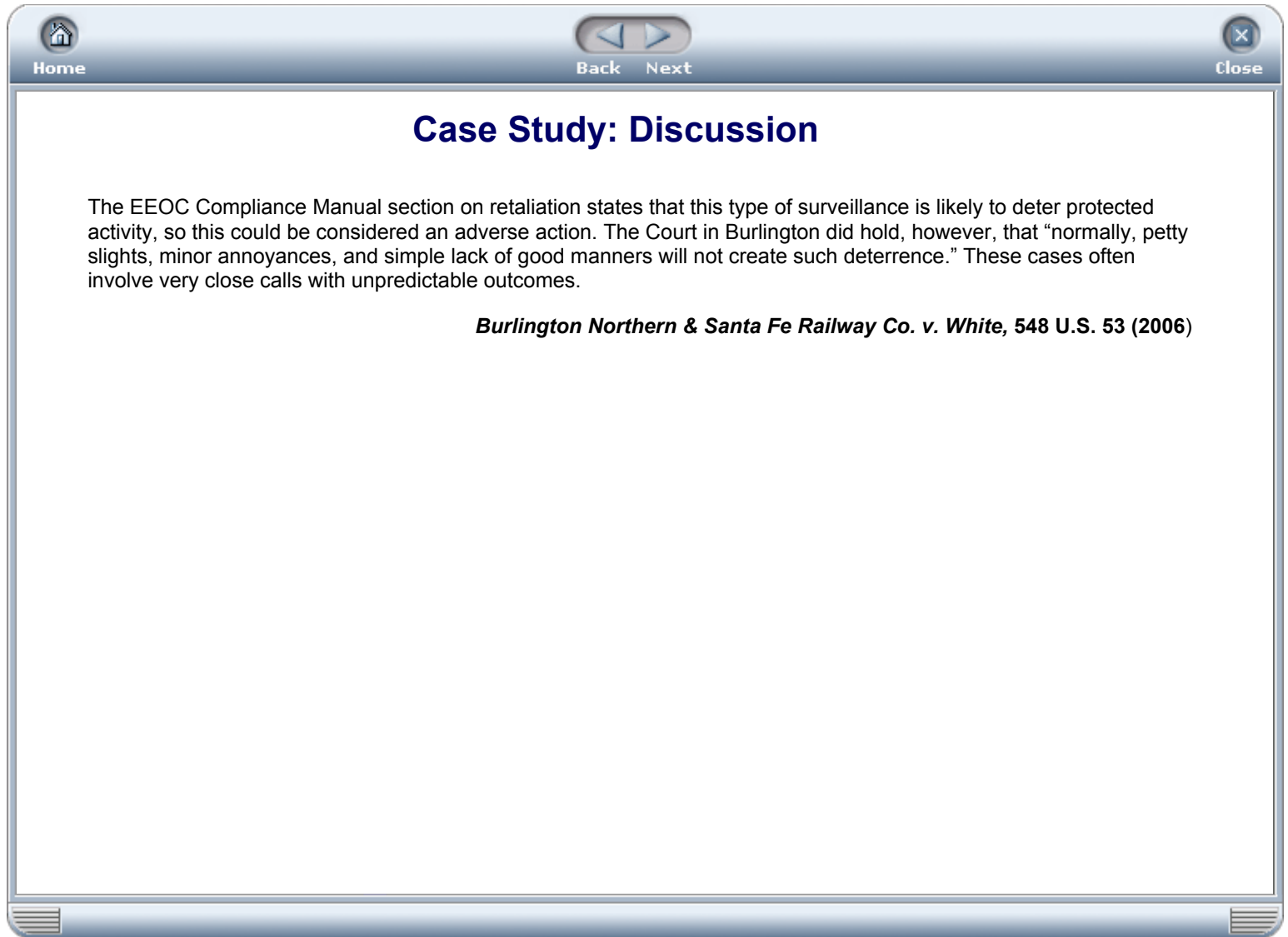
Could this be considered "adverse action"?

Yes

That is probably CORRECT.

No

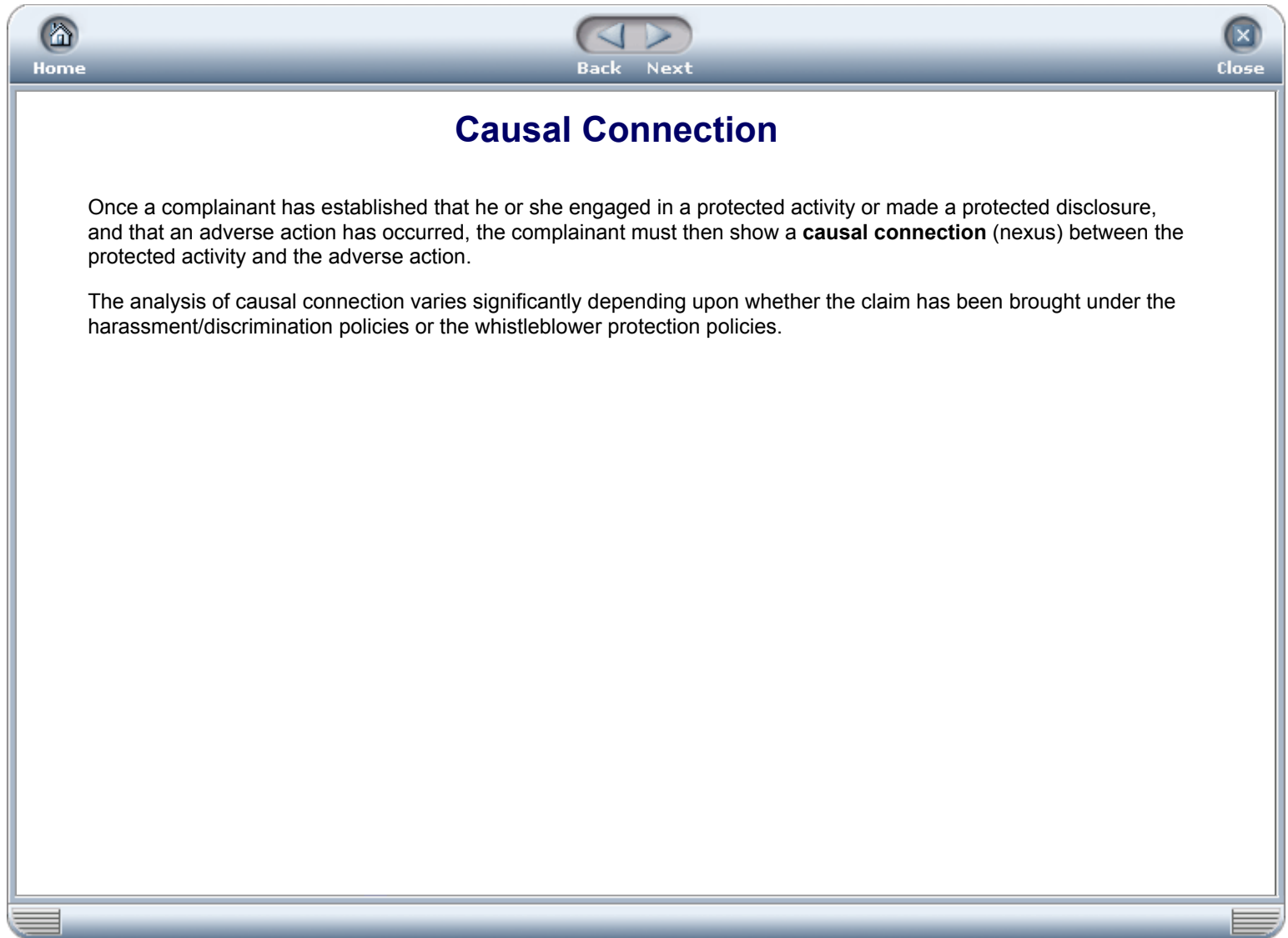
Click the Next button to read a discussion of this case study.



Case Study: Discussion

The EEOC Compliance Manual section on retaliation states that this type of surveillance is likely to deter protected activity, so this could be considered an adverse action. The Court in Burlington did hold, however, that “normally, petty slights, minor annoyances, and simple lack of good manners will not create such deterrence.” These cases often involve very close calls with unpredictable outcomes.

Burlington Northern & Santa Fe Railway Co. v. White, 548 U.S. 53 (2006)

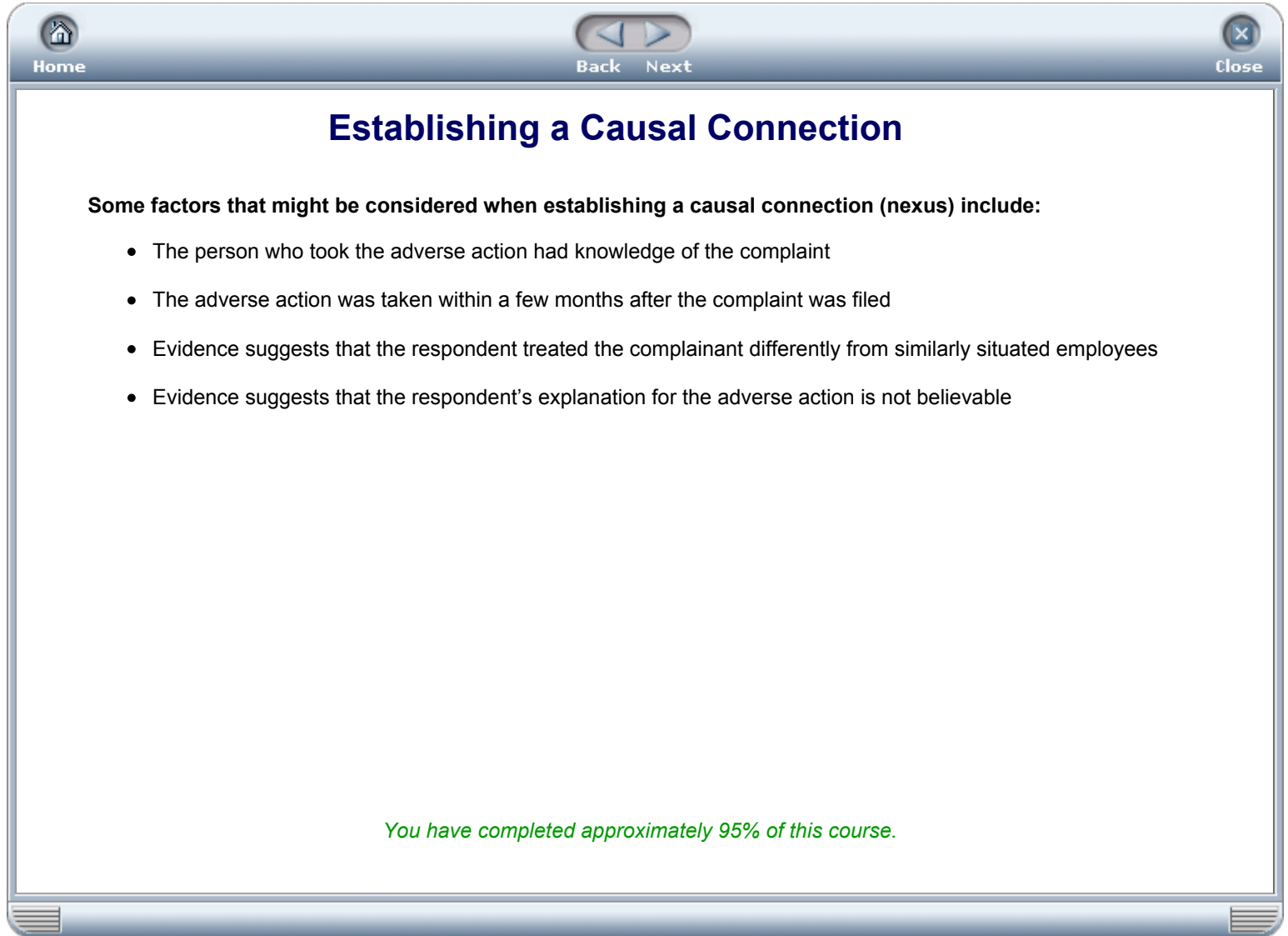


Home Back Next Close

Causal Connection

Once a complainant has established that he or she engaged in a protected activity or made a protected disclosure, and that an adverse action has occurred, the complainant must then show a **causal connection** (nexus) between the protected activity and the adverse action.

The analysis of causal connection varies significantly depending upon whether the claim has been brought under the harassment/discrimination policies or the whistleblower protection policies.

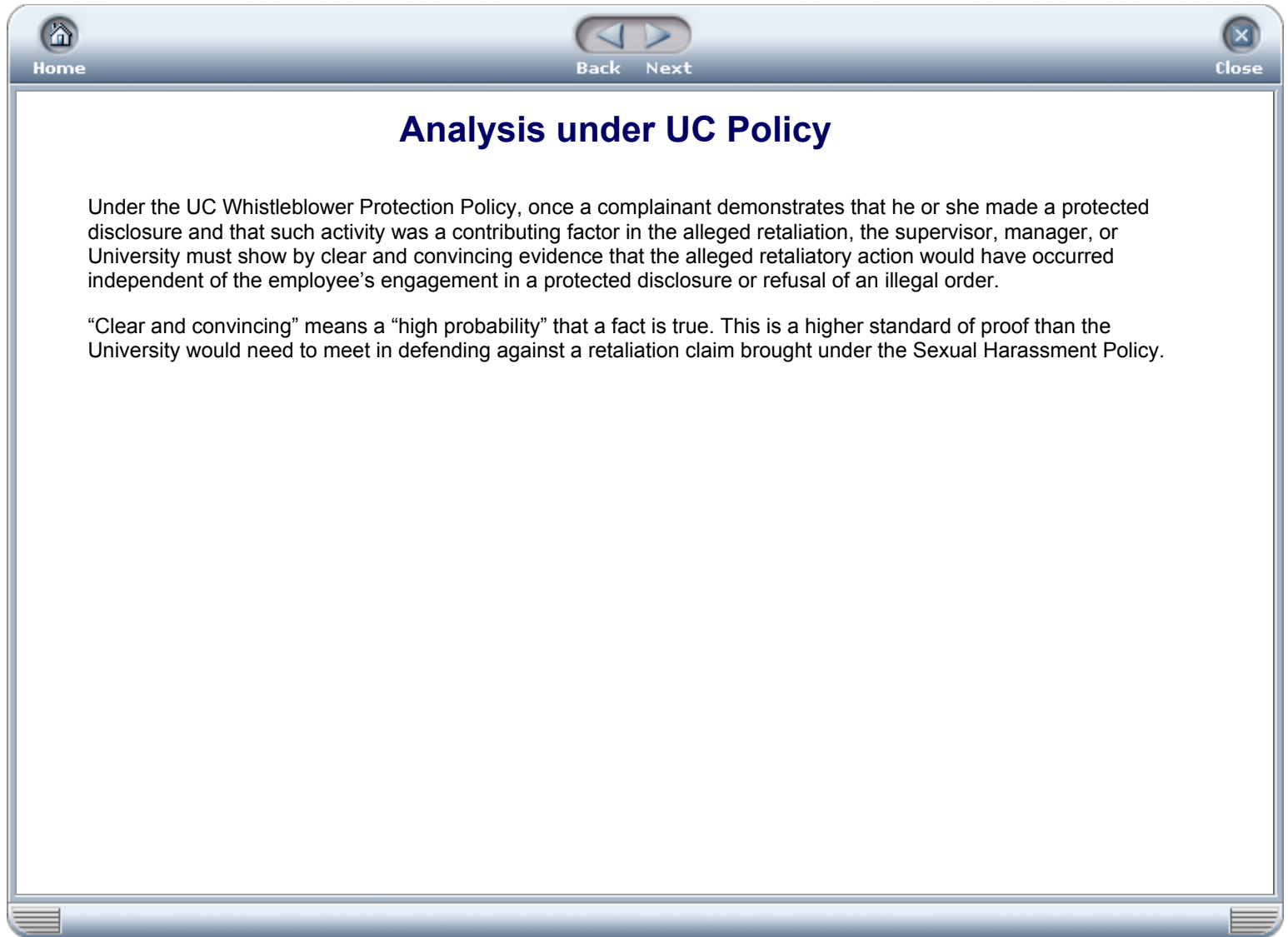


Establishing a Causal Connection

Some factors that might be considered when establishing a causal connection (nexus) include:

- The person who took the adverse action had knowledge of the complaint
- The adverse action was taken within a few months after the complaint was filed
- Evidence suggests that the respondent treated the complainant differently from similarly situated employees
- Evidence suggests that the respondent's explanation for the adverse action is not believable

You have completed approximately 95% of this course.



Home

Back Next

Close

Analysis under UC Policy

Under the UC Whistleblower Protection Policy, once a complainant demonstrates that he or she made a protected disclosure and that such activity was a contributing factor in the alleged retaliation, the supervisor, manager, or University must show by clear and convincing evidence that the alleged retaliatory action would have occurred independent of the employee's engagement in a protected disclosure or refusal of an illegal order.


"Clear and convincing" means a "high probability" that a fact is true. This is a higher standard of proof than the University would need to meet in defending against a retaliation claim brought under the Sexual Harassment Policy.

HomeBack NextClose

Case Study: Masterpiece v. Picasso, Part 3

Mr. Masterpiece has established that he filed a protected disclosure, and that Professor Picasso has taken adverse actions against him. Because these actions took place the week after Professor Picasso became aware of the complaint against him, Mr. Masterpiece has established a link between the two.

However, Professor Picasso is able to establish that Mr. Masterpiece's performance review was scheduled well before the complaint was filed, and that he wrote it before he became aware of the complaint. His comments in the review are supported by other convincing evidence. Professor Picasso is also able to show that Mr. Masterpiece's class performance is poor and grades on his art projects, which were recorded and provided to him before the complaint was filed, put him in danger of failing.



Should Mr. Masterpiece prevail on his retaliation claim?

Yes


No

Home Back Next Close

Case Study: Masterpiece v. Picasso, Part 3

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Should Mr. Masterpiece prevail on his retaliation claim?

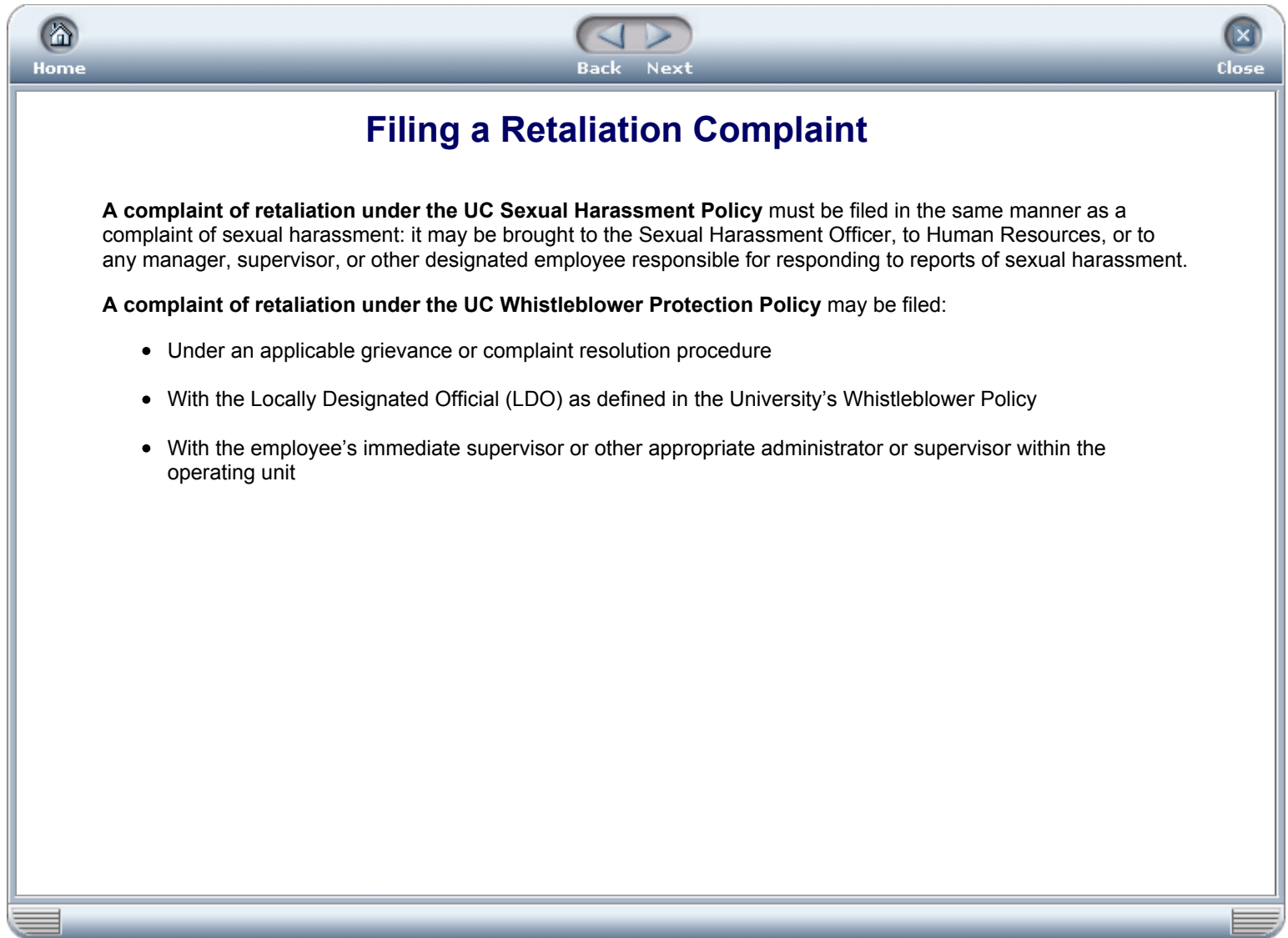
Yes **That is CORRECT.**

No **Click the Next button to read a discussion of this case study.**

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Case Study: Discussion

The facts indicate that Professor Picasso was able to show that the alleged retaliatory acts occurred independent of the complaint, and for reasons unrelated to Mr. Masterpiece's engagement in protected activity.



Filing a Retaliation Complaint

A complaint of retaliation under the UC Sexual Harassment Policy must be filed in the same manner as a complaint of sexual harassment: it may be brought to the Sexual Harassment Officer, to Human Resources, or to any manager, supervisor, or other designated employee responsible for responding to reports of sexual harassment.

A complaint of retaliation under the UC Whistleblower Protection Policy may be filed:

- Under an applicable grievance or complaint resolution procedure
- With the Locally Designated Official (LDO) as defined in the University's Whistleblower Policy
- With the employee's immediate supervisor or other appropriate administrator or supervisor within the operating unit


Home Back Next Close

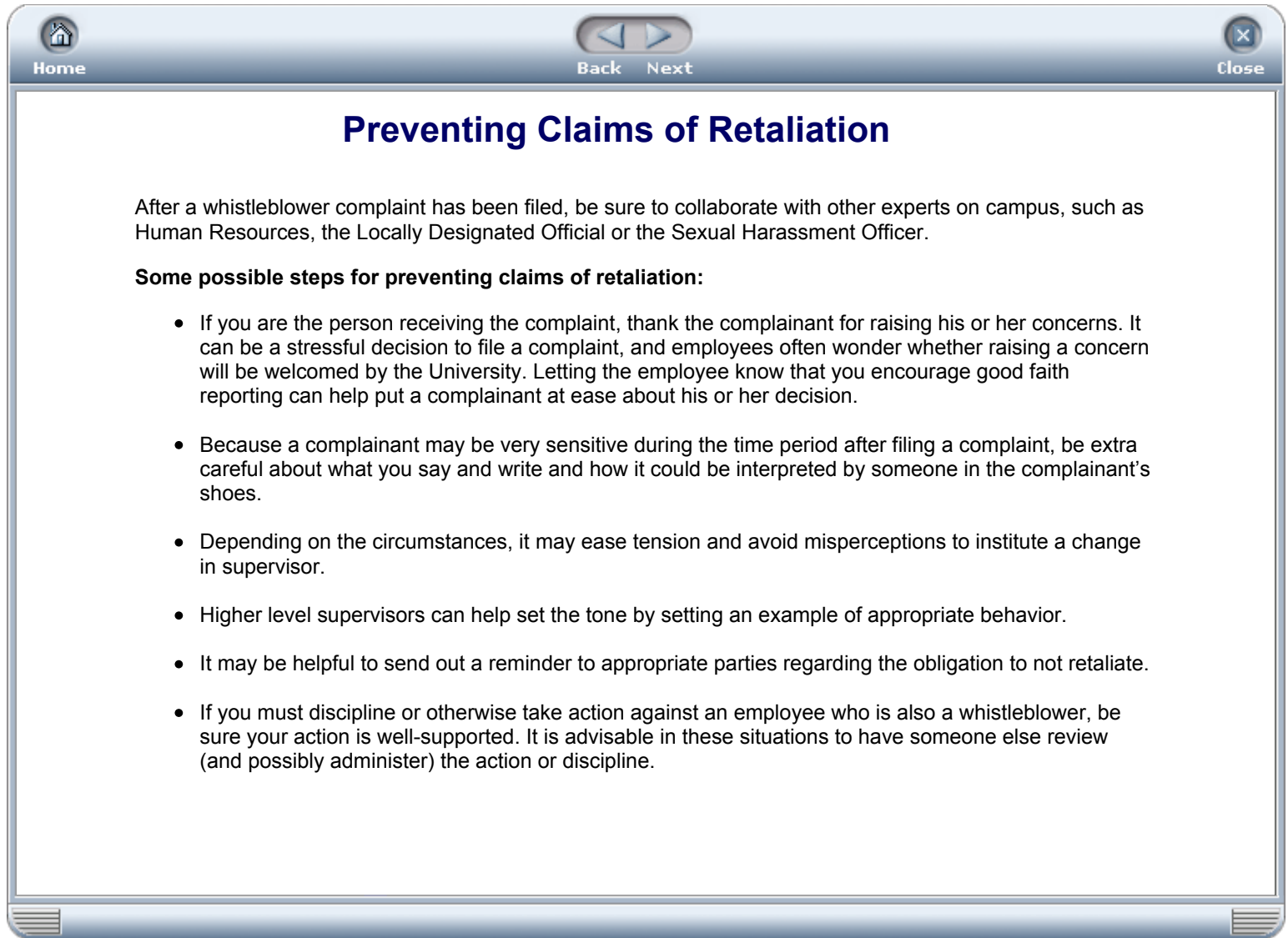
Duty to Prevent and Investigate

California law has long held that employers must take all reasonable steps to prevent discrimination and/or harassment, and that a timely investigation is part of this duty.

Additionally, in 2006, a California Court of Appeal held that California law permits a separate and independent claim for **failure to prevent and investigate claims of retaliation**. The court held that employers must also take “all reasonable steps” to prevent retaliation, reasoning that retaliation itself is a form of discrimination.

Taylor v. City of Los Angeles Dept. of Water & Power, 144 Cal. App. 4th 1216 (2006)





Home

Back Next

Close

Preventing Claims of Retaliation

After a whistleblower complaint has been filed, be sure to collaborate with other experts on campus, such as Human Resources, the Locally Designated Official or the Sexual Harassment Officer.

Some possible steps for preventing claims of retaliation:

- If you are the person receiving the complaint, thank the complainant for raising his or her concerns. It can be a stressful decision to file a complaint, and employees often wonder whether raising a concern will be welcomed by the University. Letting the employee know that you encourage good faith reporting can help put a complainant at ease about his or her decision.
- Because a complainant may be very sensitive during the time period after filing a complaint, be extra careful about what you say and write and how it could be interpreted by someone in the complainant's shoes.
- Depending on the circumstances, it may ease tension and avoid misperceptions to institute a change in supervisor.
- Higher level supervisors can help set the tone by setting an example of appropriate behavior.
- It may be helpful to send out a reminder to appropriate parties regarding the obligation to not retaliate.
- If you must discipline or otherwise take action against an employee who is also a whistleblower, be sure your action is well-supported. It is advisable in these situations to have someone else review (and possibly administer) the action or discipline.


HomeBack NextClose

Case Study: Cannes & Sundance

Connie Cannes and Sue Sundance are Professors in the Department of Film Studies. Some of the other faculty members are aware that they have recently raised concerns regarding disparate treatment on the basis of their race/national origin. During a subsequent departmental meeting, the faculty are blatantly uncivil toward these two faculty members - rolling their eyes and laughing at Professor Cannes's opinion, and also laughing at Professor Sundance and talking over her while she is speaking.

As the chair of the department, which of the following actions should you take? (You may select more than one option.)


- Terminate the meeting and consult with your EEO/Affirmative Action office.
- Remind the faculty that Professors Cannes and Sundance must not be retaliated against for having complained of discrimination.
- Remind the faculty that the University expects them to behave in a collegial and civil manner toward each other.



Home Back Next Close

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- Terminate the meeting and consult with your EEO/Affirmative Action office.
- Remind the faculty that Professors Cannes and Sundance must not be retaliated against for having complained of discrimination.
- Remind the faculty that the University expects them to behave in a collegial and civil manner toward each other.

That MAY BE CORRECT/ INCORRECT, depending upon the circumstances.
Click the Next button to read an analysis of each of these options.

Home **Back** **Next** **Close**

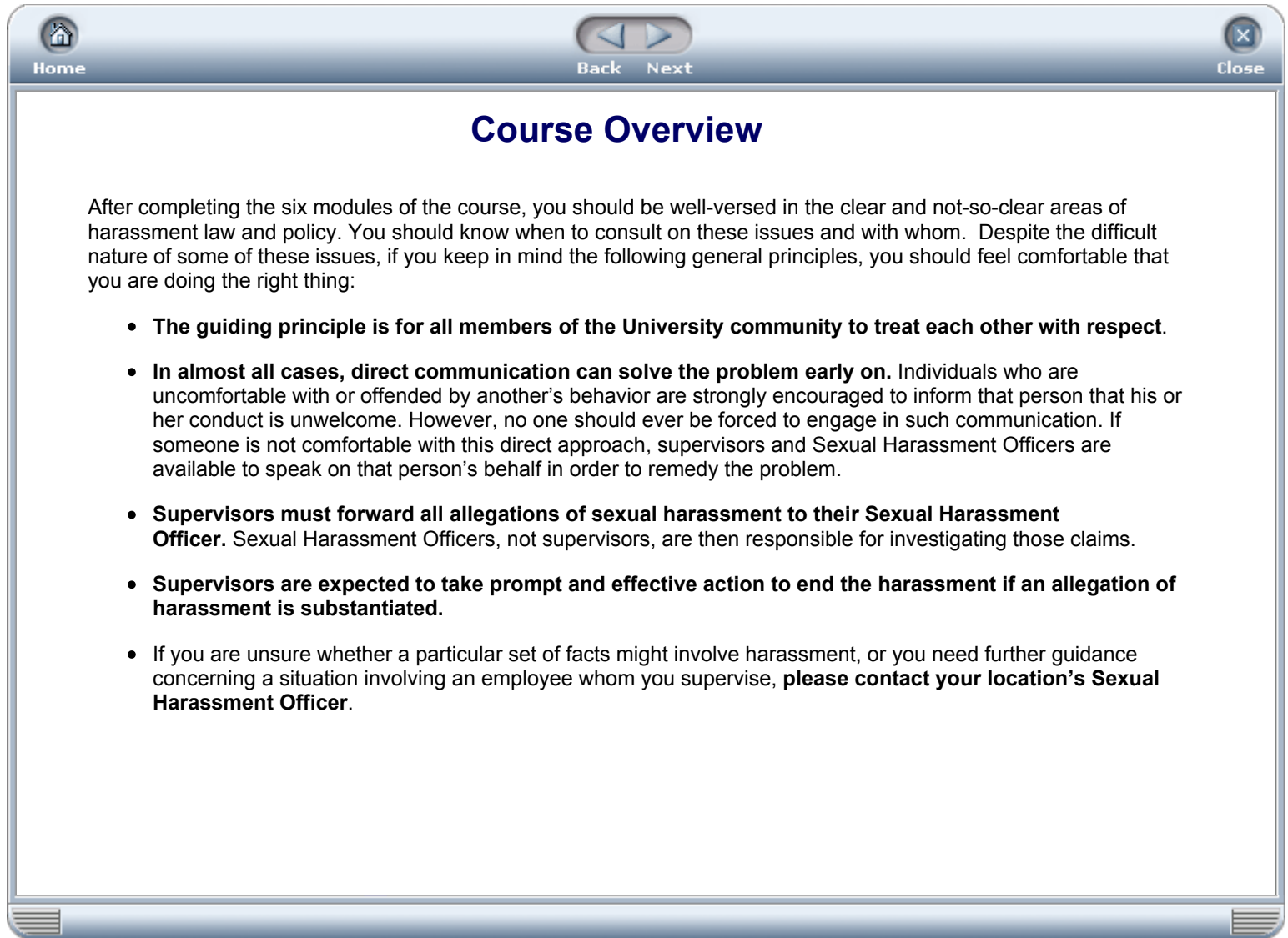
Case Study: Discussion

Here is an analysis of each of the options listed in the case study:

Terminate the meeting and consult with your EEO/Affirmative Action office.
Correct. This may be the best solution to a difficult problem and will allow you to consult with appropriate resources while also allowing the faculty some time to cool down.

Remind the faculty that Professors Cannes and Sundance must not be retaliated against for complaining of discrimination.
Incorrect. This may be problematic as not all of the faculty may be aware of the complaint made by Professors Cannes and Sundance. Thus, by identifying these two faculty members as “whistleblowers,” you may be violating their right to privacy.

Remind the faculty that the University expects them to behave in a collegial and civil manner toward each other.
Maybe correct. This may not be sufficient in light of the risks involved in a potential retaliation claim. This is certainly a good reminder to give the faculty, but given the intensity of the behaviors, it might be best to terminate the meeting and consult with appropriate resources on a course of action.



Course Overview

After completing the six modules of the course, you should be well-versed in the clear and not-so-clear areas of harassment law and policy. You should know when to consult on these issues and with whom. Despite the difficult nature of some of these issues, if you keep in mind the following general principles, you should feel comfortable that you are doing the right thing:

- **The guiding principle is for all members of the University community to treat each other with respect.**
- **In almost all cases, direct communication can solve the problem early on.** Individuals who are uncomfortable with or offended by another's behavior are strongly encouraged to inform that person that his or her conduct is unwelcome. However, no one should ever be forced to engage in such communication. If someone is not comfortable with this direct approach, supervisors and Sexual Harassment Officers are available to speak on that person's behalf in order to remedy the problem.
- **Supervisors must forward all allegations of sexual harassment to their Sexual Harassment Officer.** Sexual Harassment Officers, not supervisors, are then responsible for investigating those claims.
- **Supervisors are expected to take prompt and effective action to end the harassment if an allegation of harassment is substantiated.**
- If you are unsure whether a particular set of facts might involve harassment, or you need further guidance concerning a situation involving an employee whom you supervise, **please contact your location's Sexual Harassment Officer.**

UNIVERSITY OF CALIFORNIA POLICY ON SEXUAL HARASSMENT

A. Introduction

The University of California is committed to creating and maintaining a community where all persons who participate in University programs and activities can work and learn together in an atmosphere free of all forms of harassment, exploitation, or intimidation. Every member of the University community should be aware that the University is strongly opposed to sexual harassment, and that such behavior is prohibited both by law and by University policy. The University will respond promptly and effectively to reports of sexual harassment, and will take appropriate action to prevent, to correct, and if necessary, to discipline behavior that violates this policy.

This policy applies to the University of California campuses, the DOE Laboratories, the Medical Centers, and the Office of the President, including Agriculture and Natural Resources, and all auxiliary University locations (*the locations*).

B. Definition of Sexual Harassment

Sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when submission to or rejection of this conduct explicitly or implicitly affects a person's employment or education, unreasonably interferes with a person's work or educational performance, or creates an intimidating, hostile or offensive working or learning environment. In the interest of preventing sexual harassment, the University will respond to reports of any such conduct.

Sexual harassment may include incidents between any members of the University community, including faculty and other academic appointees, staff, coaches, housestaff, students, and non-student or non-employee participants in University programs, such as vendors, contractors, visitors, and patients. Sexual harassment may occur in hierarchical relationships or between peers, or between persons of the same sex or opposite sex.

In determining whether the reported conduct constitutes sexual harassment, consideration shall be given to the record of the conduct as a whole and to the totality of the circumstances, including the context in which the conduct occurred.

This policy covers unwelcome conduct of a sexual nature. Consensual romantic relationships between members of the University community are subject to other University policies, for example, those governing faculty-student relationships are detailed in the Faculty Code of Conduct.¹ While romantic relationships between members of the University community may

¹ The Faculty Code of Conduct may be found in Academic Personnel Manual (APM) section 015.

begin as consensual, they may evolve into situations that lead to charges of sexual harassment, subject to this policy.

Harassment that is not sexual in nature but is based on gender, sex-stereotyping, or sexual orientation also is prohibited by the University's nondiscrimination policies² if it is sufficiently severe to deny or limit a person's ability to participate in or benefit from University educational programs, employment, or services. While discrimination based on these factors may be distinguished from sexual harassment, these types of discrimination may contribute to the creation of a hostile work or academic environment. Thus, in determining whether a hostile environment due to sexual harassment exists, the University may take into account acts of discrimination based on gender, sex-stereotyping, or sexual orientation.

C. Retaliation

This policy also prohibits retaliation against a person who reports sexual harassment, assists someone with a report of sexual harassment, or participates in any manner in an investigation or resolution of a sexual harassment report. Retaliation includes threats, intimidation, reprisals, and/or adverse actions related to employment or education.

D. Dissemination of the Policy, Educational Programs, and Employee Training

As part of the University's commitment to providing a harassment-free working and learning environment, this policy shall be disseminated widely to the University community through publications, websites, new employee orientations, student orientations, and other appropriate channels of communication. The locations shall make educational materials available to all members of the University community to promote compliance with this policy and familiarity with local reporting procedures. In addition, the locations shall designate University employees responsible for reporting sexual harassment and provide training to those designated employees. Generally, such persons include supervisors, managers, academic administrators, deans, department chairs, student advisors, graduate advisors, residence hall staff, coaches, law enforcement officers, student judicial affairs staff, and health center staff. Each location shall post a copy of this policy in a prominent place on its website.

E. Reports of Sexual Harassment

Any member of the University community may report conduct that may constitute sexual harassment under this policy. In addition, supervisors, managers, and other designated employees are responsible for taking whatever action is necessary to prevent sexual harassment, to correct it when it occurs, and to report it promptly to the Title IX Compliance Coordinator (Sexual Harassment Officer) or other appropriate official designated to review and investigate

² University of California Nondiscrimination and Affirmative Action Policy Regarding Academic and Staff Employment; Nondiscrimination and Affirmative Action Policy Statement for University of California Publications Regarding Employment Practices; Academic Personnel Policy 035, Affirmative Action and Nondiscrimination in Employment; Personnel Policies for Staff Members 12, Nondiscrimination in Employment; University of California Policies Applying to Campus Activities, Organizations, and Students; and Nondiscrimination Policy Statement for University of California Publications Regarding Student-Related Matters.

sexual harassment complaints. An individual also may file a complaint or grievance alleging sexual harassment under the applicable University complaint resolution or grievance procedure (*University of California Procedures for Responding to Reports of Sexual Harassment, Appendix I: University Complaint Resolution and Grievance Procedures*).

F. Response to Sexual Harassment

The locations shall provide a prompt and effective response to reports of sexual harassment in accordance with the *University of California Procedures for Responding to Reports of Sexual Harassment (Procedures)*. A prompt and effective response may include early resolution, formal investigation, and/or targeted training or educational programs. Upon findings of sexual harassment, the University may offer remedies to the individual or individuals harmed by the harassment consistent with applicable complaint resolution and grievance procedures (*Procedures, Appendix I: University Complaint Resolution and Grievance Procedures*). Such remedies may include counseling, an opportunity to repeat course work without penalty, changes to student housing assignments, or other appropriate interventions. Any member of the University community who is found to have engaged in sexual harassment is subject to disciplinary action up to and including dismissal in accordance with the applicable University disciplinary procedure (*Procedures, Appendix II: University Disciplinary Procedures*) or other University policy. Generally, disciplinary action will be recommended when the harassing conduct is sufficiently severe, persistent, or pervasive that it alters the conditions of employment or limits the opportunity to participate in or benefit from educational programs. Any manager, supervisor, or designated employee responsible for reporting or responding to sexual harassment who knew about the harassment and took no action to stop it or failed to report the prohibited harassment also may be subject to disciplinary action. Conduct by an employee that is sexual harassment or retaliation in violation of this policy is considered to be outside the normal course and scope of employment.

G. Intentionally False Reports

Because sexual harassment frequently involves interactions between persons that are not witnessed by others, reports of sexual harassment cannot always be substantiated by additional evidence. Lack of corroborating evidence or “proof” should not discourage individuals from reporting sexual harassment under this policy. However, individuals who make reports that are later found to have been intentionally false or made maliciously without regard for truth, may be subject to disciplinary action under the applicable University disciplinary procedure (*Procedures, Appendix II: University Disciplinary Procedures*). This provision does not apply to reports made in good faith, even if the facts alleged in the report cannot be substantiated by an investigation.

H. Free Speech and Academic Freedom

As participants in a public university, the faculty and other academic appointees, staff, and students of the University of California enjoy significant free speech protections guaranteed by the First Amendment of the United States Constitution and Article I, Section I of the California Constitution. This policy is intended to protect members of the University community from

discrimination, not to regulate protected speech. This policy shall be implemented in a manner that recognizes the importance of rights to freedom of speech and expression. The University also has a compelling interest in free inquiry and the collective search for knowledge and thus recognizes principles of academic freedom as a special area of protected speech. Consistent with these principles, no provision of this policy shall be interpreted to prohibit conduct that is legitimately related to the course content, teaching methods, scholarship, or public commentary of an individual faculty member or the educational, political, artistic, or literary expression of students in classrooms and public forums. However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal or state anti-discrimination laws.

I. Additional Enforcement Information

The federal Equal Employment Opportunity Commission (EEOC) and the California Department of Fair Employment and Housing (DFEH) also investigate complaints of unlawful harassment in employment. The U.S. Department of Education Office for Civil Rights (OCR) investigates complaints of unlawful harassment of students in educational programs or activities. These agencies may serve as neutral fact finders and attempt to facilitate the voluntary resolution of disputes with the parties. For more information, contact the nearest office of the EEOC, DFEH or OCR listed in the telephone directory.

This Policy has been updated with a technical change and supersedes the University of California Policy on Sexual Harassment dated December 14, 2004.

Office for the Prevention of Harassment and Discrimination

Welcome

What We Do

The Office for the Prevention of Harassment and Discrimination (OPHD) is responsible for ensuring the University provides an environment for faculty, staff and students that is free from discrimination and harassment on the basis of categories including race, color national origin, gender, age and sexual orientation/identity.

The OPHD Office has the specific responsibility for providing prompt and effective responses to all complaints of sex discrimination or harassment for faculty, staff and students. The Office also responds to concerns from faculty and students regarding other forms of discrimination as covered by University Nondiscrimination policies-- such as, age, religion, national origin, etc.*

The OPHD Office works in collaboration with the system-wide Office of the President, offering both online and in person workshops to fulfill requirements under California State law to provide two hours of sexual harassment prevention education every two years to faculty, managers and supervisors. Further, the Office provides opportunities to staff employees and students, for education regarding issues of discrimination, equity, and the impacts of discrimination and unequal treatment on department and classroom climate.

Key University of California Office of the President and Berkeley Campus Policies for your reference:

- [University Nondiscrimination Policies \(http://policy.ucop.edu/doc/4010391/PPSM-12\)](http://policy.ucop.edu/doc/4010391/PPSM-12)
- [Berkeley Campus Policy on Sexual Harassment \(http://ophd.berkeley.edu/policies-procedures/sexual-harassment\)](http://ophd.berkeley.edu/policies-procedures/sexual-harassment) and [Complaint Resolution Procedures \(http://ophd.berkeley.edu/policies-procedures/complaints#ResolutionProcedure%20/path#anchor\)](http://ophd.berkeley.edu/policies-procedures/complaints#ResolutionProcedure%20/path#anchor).
- [Berkeley Campus Student Policy and Procedures Regarding Sexual Assault and Rape. \(http://ophd.berkeley.edu/policies-procedures/sexual-assault\)](http://ophd.berkeley.edu/policies-procedures/sexual-assault)
- [Code of Student Conduct \(http://dev.sa2.pantheon.berkeley.edu/sites/default/files/UCB-Code-of-](http://dev.sa2.pantheon.berkeley.edu/sites/default/files/UCB-Code-of-)

[Conduct-new%20Jan2012_0.pdf](#)
<http://sa.berkeley.edu/code-of-conduct>

- [Faculty Code of Conduct \(http://apo.chance.berkeley.edu/faculty_misconduct_015.pdf\)](http://apo.chance.berkeley.edu/faculty_misconduct_015.pdf)

* The Officer of Human Resources handles non-academic staff complaints of discrimination as outlined in personnel policies and contracts. The Academic Compliance and Disability Standards Office handles disability complaints from all faculty, staff and students.

"While we are not responsible for the harassment, we are responsible for our response to it."
 Brett Solokow, President
 National Council Higher Education Risk Management

We hope it doesn't happen to you, but if it does, please be sure to contact us for guidance before responding to a concern.

- Denise Oldham, 510-643-7985
- Will Mallari, 510-642-6020
- Maria Padilla, 510-643-9707

ADDRESS

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