

# Defining Sexual Harassment

Sexual Harassment refers to behavior of a sexual nature which is unwelcome and personally offensive to the recipient. Unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical contact of a sexual nature constitutes "sexual harassment" when:

- submission to such conduct is made explicitly or implicitly a condition of an individual's employment;
- submission to or rejection of such conduct is used as a basis for an employment decision affecting the employee; or
- the harassment has the purpose or effect of unreasonably interfering with the employee's work performance or creating an environment which is intimidating, hostile, or offensive to the the employee.

In 1980, the Equal Employment Opportunity Commission (EEOC) amended its sex discrimination guidelines under Title VII to include sexual harassment. Consequently, in 1986, the U.S. Supreme Court determined that sexual harassment constituted a violation of Title VII.

## Examples:

Patting, pinching, hugging, cornering, kissing, fondling, brushing up against, foul language, sexual oriented propositions, sexual jokes or remarks, comments about physical appearance, obscene gestures, sexually explicit pictures, cartoons, calendars, or other materials, or comments which may be considered offensive to another employee.

**Employers have the responsibility of preventing sexual harassment.**



## Checklist for Managers & Supervisors:

- Even if the employer has a policy against sexual harassment, the employer can still be held liable for the actions of any of it's managers or agents if it knew or should have known of the occurrence.
- To defeat a claim of sexual harassment, the employer would have to show that an employee welcomed the sexual conduct by demonstrating such factors as the employee solicited or incited the conduct, or that the employee welcomed the conduct by acting in a sexually aggressive manner.
- An employer can be held liable for actions of it's employees and even it's customers, vendors, etc., if it knew or should have known of the occurrence and failed to take appropriate action.
- A Supervisor can be held liable for sexual harassment committed by one of his/her employees against another.
- A man as well as a woman may be the victim of sexual harassment.
- About 90% of all sexual harassment in today's workplace is done by males to females.

**Sexual Harassment is a violation of Federal, State, and Local Law.**

## What can my company do to prevent sexual harassment?

The employer should take all necessary steps to prevent sexual harassment. A few suggestions include:

- develop a written policy prohibiting sexual harassment
- inform managers and employees of the policy, and have them sign a form acknowledging their awareness of the policy.
- develop a grievance procedure and making the procedure known to employees. Have the employee's sign a form acknowledging their awareness of the grievance procedure.
- display the sexual harassment policy in a visible place for all personnel (*e.g. timeclock area, break room, employee restrooms, etc.*)
- provide training to ALL personnel on issues relating to sexual harassment.

**The Human Rights Commission provides sexual harassment training specifically designed to meet your company's or individual needs. If you feel this training could benefit you or your company, please contact:**

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## How to Investigate an Alleged Claim of Sexual Harassment

- **TAKE EVERY COMPLAINT YOU RECEIVE SERIOUSLY!**
- Begin a prompt investigation the instant a complaint is filed.
- If there are more than one allegation, treat each one separately.
- Gather the facts from the complainant, and do not make judgements.
- Obtain the answers to the questions: “who, what, when, where, why, and how”?
- Limit the number of person’s in the organization who are aware of the complaint (*Need to know basis only!*)

### Interviewing the Complainant:

- Obtain answers to the questions: “who, what, when, where, why, and how”?
- Get the specifics of each incident (*if there are multiple*) that occurred.
- Determine the effect of the conduct on the complainant (*i.e. economic loss, embarrassment, humiliation, psychological, etc.*).
- Prepare a detailed chronology on the alleged events.
- Obtain a sworn statement from the complainant.
- Find out what the complainant wants in order to resolve the situation.
- Explain to the complainant that you are taking the accusation seriously and will conduct a prompt and thorough investigation.
- Ensure the complainant that he/she will not be retaliated against for coming forward with the claim.

### Interviewing the Alleged Harasser:

- Obtain a written, sworn statement from the accused.
- Determine the relationship between the complainant and the alleged harasser (*co-worker, supervisor, etc.*).
- Determine whether the accused directed or had the responsibility for the work of the complainant, or had the capacity to effect the complainant’s working conditions and/or the complainant’s employment status.
- Note the reaction of the alleged harasser. Review the complaint item by item (*if applicable*) with the accused.
- If the accusations are denied, probe for possible explanations of why the complainant would make such a charge.
- Assure the accused that the information obtained will remain only with the person’s who are involved in the investigation of the complaint.

### Interviewing Witnesses of Both Parties (If applicable):

- Interview the accused’s supervisor to ascertain any disciplinary problems or behavioral patterns, and to develop an understanding of the relationship between the accused and the complainant.
- Determine if the harassment was reported to a supervisor, and if so, what remedial action was taken, if any.
- Gather any written documentation relating to the remedial action taken against the accused, if any.
- Obtain a written statement from the supervisor.
- Interview any potential witnesses to alleged harassment.
- Obtain written statements from all parties interviewed.
- Assure witnesses that their input is important and that they will not be retaliated against for participating in the investigations.

### Resolving the Complaint:

- If the allegations are corroborated, avoid punishing the complainant (*i.e. transferring to another location, an undesirable shift, etc.*) unless consent is granted from the complainant for such measures.
- Consider the severity of the situation when imposing discipline on the harasser so as not to be more excessive than the initial claim.
- Make sure the complainant is satisfied with the procedure and outcome.
- Conduct follow-up interviews with both parties and discuss with them the actions the company took and why.

Prompt investigations and appropriate remedial action have been found to be sufficient in avoiding future employer liability!

## Sexual Harassment in Today’s Workplace:

Information every employer  
should know



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