

UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION



**Cleveland Field Office
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How to Identify, Prevent and Eliminate Harassment in the Workplace





Preliminaries

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Nuances/specific cases-----

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All rules supported by many cases that
have been decided in courts



What is Harassment?

What is Harassment?

HARASSMENT means any unwelcome comments or unwelcome conduct





What is “Unwelcomeness”?

- Employee did not solicit or invite the conduct
- Employee regarded the conduct as undesirable

Unwelcomeness can be:

- Non-verbal, e.g., facial expressions, gestures or body language
- Verbal, e.g., saying “Stop!” “No!”, etc., or complaining to a supervisor



What is Workplace Harassment?

Harassment based on any of the following:

- Race
- Color
- Religion
- Sex (pregnancy, LGBT)
- National Origin
- Age (40 and over)
- Disability
- Genetic Information
- Retaliation



Workplace?

Any place or any situation
connected to the workplace.



Harassment Could Include:

- Graffiti depicting sexual images, or pictures/symbols associated with a particular protected group, e.g., nooses or swastikas
- Making derogatory comments about a person's racial and ethnic group or identity, e.g., anti-Muslim slurs
- Imitating or mocking a person's disability
- Ridiculing a person's religious practices



What is Sexual Harassment?

Sexual Harassment includes:

- Unwelcome sexual advances
- Requests for sexual favors
- Other verbal or physical conduct of a sexual nature



Sexual Harassment Could Include:

- Asking personal questions about a person's sex life
- Making comments about a person's looks, parts of the anatomy, body shape, size, or manner of dress
- Telling stories and jokes of a sexual nature
- Making sexual innuendoes
- Giving a person a neck massage
- Giving a person personal gifts
- "Stalking" a person



Sex-Based Harassment

- ❑ Male manager always commenting to female employee about how she took a job a man with a family should have.
- ❑ Female supervisor constantly making offensive comments to the male employees such as “men are stupid”.
- ❑ Female doesn't get promotion and boss says that she really should just be home barefoot and pregnant anyway.
- ❑ Calling women the “B” word.



What is Not Unlawful Harassment?

- Simple teasing
- Making casual, offhand comments
- Small, unrelated incidents



Who Could be Involved in Workplace Harassment?

□ Victim:

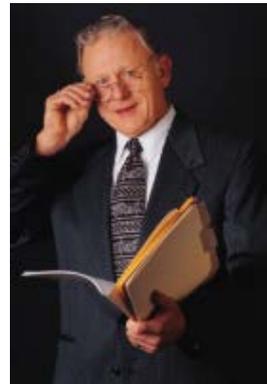
- Male or Female
- Employee
- Non-Employee



The **Victim** and the **Harasser** may, or may not be in the same group (e.g., a female can sexually harass another female; etc.)

□ Harasser:

- Male or Female
- Supervisor
- Employee
- Non-employee





Scenario 1

- Debra's male co-workers frequently engage in bawdy sexual banter and horseplay in the break room. For example, they trade stories about their sexual prowess and experiences. Debra sometimes has conversations of a sexual nature with one of her male co-workers, but she has let the others know that she is offended by their banter and horseplay.
- Is Debra's co-workers' behavior harassment? Why?

Company Liability





Tangible Employment Actions



What are “Tangible Employment Actions?”

- Tangible employment actions are those that change the terms and conditions of employment for the victim, e.g. termination, demotion, less favorable shift or work assignments, etc.—happens when employee does not succumb to harasser’s advances.
- Tangible employment actions are also benefits that the victim receives, e.g., promotion, a raise, etc., in return for submitting to the harasser’s demands, e.g., for sexual favor

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- Tangible employment actions can only be performed by someone in a position of power and who makes employment decisions, e.g., a supervisor or manager

Employer Liability for Tangible Employment Action

The employer is always liable if:

- The Harasser is a **supervisor**
- The Harasser has the authority to undertake or recommend tangible employment decisions affecting the Victim
- The Harasser has the authority to supervise the Victim's daily work activities





Scenario 2

- Mauricio notices that, whenever his supervisor, Kiana, meets him in the Terminal, she looks him up and down. Once, she looked at his body suggestively and remarked that he looked “buff”. Mauricio told her that he did not consider her behavior appropriate for the workplace. Kiana later interviewed Mauricio for a sought-after special assignment, but he did not get it. Mauricio believed that she was punishing him for rejecting her unwelcome sexual advances, so he resigned.
- Is the employer liable for Kiana’s conduct towards Mauricio? If so, why?



Hostile Work Environment



Hostile Work Environment Harassment: Key Issues

- Frequent and/or severe
- Meets “Reasonable Person” standard

What is “Hostile Work Environment” Harassment?

- It does not result in a tangible employment action
- It creates an intimidating or offensive work environment



Anyone can commit hostile work environment harassment - not only a supervisor, but also a co-worker or even a non-employee

Reasonable Person Standard

- Is the conduct severe or pervasive enough to create an environment that a reasonable person would find hostile, intimidating, or abusive?

and

- Does the employee consider the conduct hostile, intimidating, or abusive?



Hostile Work Environment Harassment: Employer Liability

1. By a High-Ranking Official:
 - ▣ Automatic liability
2. By a Supervisor:
 - ▣ Liable unless employee proves that both parts of the “**affirmative defense**” are met
3. By a Co-Worker or Non-Employee:
 - ▣ Liable if the employer knew, or should have known about the harassment, and did not correct it

Hostile Work Environment: Harassment by a Supervisor

- The employer is **liable** unless both parts of the **Affirmative Defense** are met

Affirmative Defense

1. Employer exercised reasonable care to prevent and promptly correct any harassment

and

2. Employee unreasonably failed to take advantage of any preventative or corrective opportunities or to otherwise avoid harm





Scenario 3

- Ana's new supervisor, Dwayne, frequently makes remarks that are offensive to her and other Hispanic employees. He also makes crude and demeaning references about women as a whole. Ana does not complain about Dwayne's conduct because one of her co-workers had already complained about the harassment and was promptly fired. Ana's employer does not have a policy against harassment and has not informed employees how they can make a complaint.
- Is Dwayne's conduct harassment?
- Is the employer liable?
- Should Ana complain?

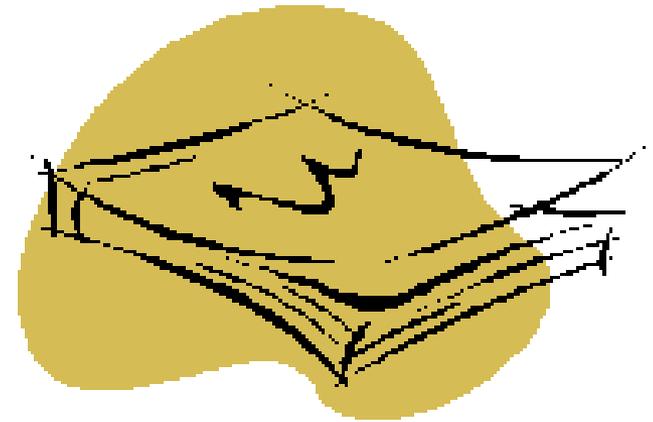
Hostile Work Environment: Harassment by a Co-worker or Non-Employee

- Employer is **liable** if s/he:
 - ▣ Knew or should have known of the harassment and
 - ▣ Failed to take immediate and appropriate corrective action
- Employer knowledge is assumed if:
 - ▣ The victim complains to a supervisor; or
 - ▣ The conduct occurred in the presence of a supervisor; or
 - ▣ The conduct is recurring and/or widespread

Prevention Strategies and Remedies

Appropriate Preventive Actions

- Employee Training + new employee orientation
- Anti-Harassment Policy
- Internal Complaint Procedure (more than one avenue)
- Monitoring enforcement of Anti-Harassment Policy
- Evaluating supervisors' performance in enforcing Anti-Harassment Policy



Appropriate Corrective Actions: Employer

- Stop harassment immediately
- Investigate incidents
- Protect against Retaliation
- Provide appropriate relief



Employee's Responsibility:

- Take advantage of any preventive opportunities provided
- Take advantage of the employer's complaint process



What to Do if You are a Victim of Harassment

- Remain calm and in control
- Be direct and frank with the harasser – let him or her know how you feel
- Follow the Anti-harassment Policy
- Keep a record of dates, times, witnesses
- Talk to your supervisor or other person in authority, if they are not the problem
- Inform the employer of your desired remedy

Management and Employee Responsibilities

- Know the company's anti-harassment policy
- Treat everyone with respect
- Don't make assumptions about how people will react to practical jokes
- Think before speaking
- Consider others' feelings and perceptions
- Never "go along with the crowd" if the crowd's behavior is offensive



How Harassment Affects the Workplace



- High legal costs and fines (litigation)

- Negative and damaged image of the organization

- Increased employee turnover



- Hiring and training new employees, resulting in higher costs

How Harassment Affects the Victims

- ❑ Reduced productivity
- ❑ Lowered morale
- ❑ Emotional pain



It's against the law!



More Training Needed?

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● QUIZ



Questions?



Thank you

and

Happy Holidays