

Sexual Harassment in the Workplace: It's Against the Law

Introduction

Sexual harassment can happen to anyone. The most frequently reported situation involves a male harassing a female, but harassment can and does happen to men. A person can also be sexually harassed by a person of the same sex. Harassment can occur in any work setting from an entry level job to the executive suite, and in any type of job.

Sexual harassment is not just about sex: it is about power and the misuse of that power. Again, the most frequently reported situation involves someone with supervisory control who harasses a subordinate. The supervisor in a work place wields a tremendous amount of power over a worker's employment, be it getting hired, wages and benefits provided, evaluations, promotions, raises, and even getting vacation time approved. The misuse of that power in a sexual manner can have devastating economic and psychological effects for the victim.

Sexual harassment between co-workers can occur, which again can be a power play by one person against the other. While the co-worker may not have the power to provide or continue the employment, he or she has the power to make another person miserable on the job and affect job performance. An employee could also be harassed by a non-employee coming to the workplace, such as a customer or service person.

The Laws that Prohibit Harassment

Title VII of the federal Civil Rights Act of 1964, landmark legislation which prohibits discrimination in the workplace, includes sex as a protected class. The Equal Employment Opportunity Commission (EEOC) has issued guidelines on sexual harassment in employment which provide the legal definition of harassing behavior and which set forth the standards followed by enforcement agencies and the courts in handling charges of sexual harassment.

The "Iowa Civil Rights Act of 1965," Iowa Code Chapter 216, does not expressly define or prohibit sexual harassment, but such behavior is recognized by the courts as a form of prohibited sex discrimination. The state law goes beyond Title VII by also prohibiting sex discrimination in the areas of housing, public accommodations, credit, and education.

In addition, many cities have human rights/civil rights ordinances that also prohibit sex discrimination in the workplace.

The Definition: What it is and What it isn't

The EEOC Guidelines define sexual harassment as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature, when

- submission to such conduct is made an implicit or explicit condition of an individual's employment;
- submission to or rejection of such conduct affects employment opportunities; or
- such conduct interferes with an employee's work or creates an intimidating, hostile, or offensive work environment.

This definition covers two types of sexual harassment. The first is *quid pro quo*, or "this for that," and can be committed only by someone who has the power to control the victim's job destiny. The person with authority makes a "put out or get out" demand, a "submit to my sexual requests or you will be fired, demoted, intimidated, passed over for a promotion, or in some other way harmed on the job" demand. Whether an individual submits to such a demand, or refuses such a demand and experiences repercussions, the individual is being victimized by sexual harassment. Most of these situations are blatant and easily recognized. Victims of *quid pro quo* usually suffer a tangible economic loss.

The second type of sexual harassment is called "**hostile environment.**" A supervisor, co-worker, or someone else with whom the victim comes in contact on the job creates an abusive work environment or interferes with the employee's work performance because of committing harassing acts of a sexual nature. Victims of hostile environment do not usually suffer an economic loss, unless the person must leave the job because of intolerable working conditions.

The key phrases in the EEOC definition are "unwelcome" and "of a sexual nature." The behavior must be unsolicited and unwelcomed by the victim. The phrase of a sexual nature" means that sex or gender must be the underlying nature of the behavior. Men and women may have disputes or disagreements on the job, but this

would not necessarily be viewed as harassment unless there is a sexual element to the interaction.

This definition does not prohibit the usual social interaction, which sometimes is of a sexual nature, among people who work together. People can get acquainted, joke together, or ask for a date as long as that is welcomed by the parties involved. Welcome behavior or consensual contacts of a sexual nature are not harassment.

Specifically, what types of actions, if not welcomed by the recipient of the behavior, could be viewed as sexual harassment? Inappropriate actions break down into four categories:

1. **Physical:** touching in a sexual manner, pinching, patting, rubbing up against, gestures, assault.

2. **Verbal:** jokes of a sexual nature, comments or questions about a person's body, dress, or personal life, using demeaning or inappropriate terms, using crude and offensive language of a sexual nature.

3. **Visual:** cartoons, drawings, or caricatures of a sexual nature, pin-up pictures or calendars, displaying sexual objects in the workplace.

4. **Hazing:** teasing, practical jokes of a sexual nature, ostracizing, starting or spreading rumors about a person's personal life or sexual activities.

In determining if your own conduct might be unwelcome to others, consider these questions: "Would my behavior change if someone from my family was present?" "Would I want my spouse or child to be treated this way?"

What to Do If it Happens to You

If harassment happens to you, there are actions you can take to stop the harassment and initiate action against the harasser. Do not feel powerless.

- Know your rights, including your company's policy on sexual harassment and its internal grievance procedure. Know to whom in your company you can report the problem. Know what other actions are available to you under the law.

- Tell the harasser that the behavior is neither welcome nor humorous. This can be done in person, or in writing, if necessary. Be firm and assertive in doing so, although it is not necessary to be hostile and combative. Sometimes people send mixed messages by trying to be too nice when saying "no." Be specific in what you want the harasser to do, such as "Please do not touch me again," or "Please do not make those personal comments to me."

- If the offensive behavior continues, report it to your supervisor, manager, or personnel administrator. The employer may not be liable unless they knew or should have known that the harassment was taking place.

If the harasser is the owner of the business, go directly to an outside agency.

- Keep a written record or diary, preferably in a bound book, of the offensive behavior, documenting as precisely as possible what happened; when and where it took place; the names of witnesses, if any; your response; and any other information that may be helpful later. This documentation will be extremely helpful during an investigation, whether it be an internal investigation or one done by an outside agency.

- Keep copies of all your employment records such as attendance and evaluations. Sometimes a harasser/supervisor will attempt to alter records to try to discredit you.

- Try to find out whether other employees have also been harassed, and whether they could offer confirming testimony. There's strength and support in knowing that you're not the only one that it has happened to.

- If you have been physically or sexually abused you can take action by filing criminal charges against the person who abused you.

- Don't blame yourself for someone else's behavior. You did not cause the harassment.

- Be aware that retaliation for having filed a complaint or participating in an investigation is also prohibited by law.

- If your initial attempts to resolve the situation are not successful or if the harassment is ongoing and severe, don't be afraid to ask for help. Consider filing a formal complaint with a city, state (Iowa Civil Rights Commission) or federal agency (EEOC). Keep in mind that the complaint must be filed within **180 days** of the latest incident of discrimination.

- Sexual harassment, like other forms of sexual abuse, may cause on-going emotional stress. Seek medical care or psychological counseling if needed.

An inevitable question that arises is, "Why do employees put up with harassment and delay reporting or fail to report it to the employer?" The major reason why people do not speak out is fear: fear of loss of the job or repercussions on the job; fear that the complaint will not be taken seriously, or that they will not be believed. Not being considered a team player or being accused of not having a sense of humor or not getting along with the work group are other frequent fears.

Another criticism that can happen to women is the accusation that somehow they "asked for it" by their manner of dress or behavior. No one "asks for" sexual harassment. The victim does not create the problem; the harasser's behavior creates the problem.

What Employers Need to Know About Sexual Harassment

The Costs of Sexual Harassment

Sexual harassment is expensive. A harassing atmosphere at work will cause low employee morale and high turnover. Low morale usually translates to low production or poor quality work. Many times a victim of harassment will simply quit and leave a job rather than have a confrontation about it. This costs money for the employer to hire and train new workers.

There are costs involved if a sexual harassment complaint is filed internally with the employer, i.e., staff time needed to investigate and resolve the complaint. If a complaint is filed with an enforcement agency, there will be additional costs for staff time and legal counsel.

If there is an adverse decision from the enforcement agency or a court, the employer may have to pay damages for lost pay or emotional distress.

If a charge of sexual harassment becomes public knowledge, a business could suffer a loss of customers and public good will.

Employer Liability

When a determination has been made that sexual harassment did occur in the workplace, the following liability standards apply:

- Harassment by a supervisor or manager: the employer is almost always liable.
- Harassment by a supervisor or manager: the harasser may be individually liable, as well as the employer.
- Harassment by a co-worker: the employer is liable if the employer knew or should have known about the harassment and did not take prompt remedial action. Co-workers may be individually liable.
- Harassment by a third party or non-employee: employer is liable if the employer knew or should have known about the harassment and did not take prompt remedial action.

Owners, managers and supervisors need to be aware of the provisions of the laws prohibiting harassment in order to handle problems if and when they occur.

What Employers Need to Do to Prevent Harassment

The EEOC Guidelines also speak to the need for the employer to take active steps to prevent harassment before it occurs. EEOC suggests affirmatively raising the

subject, making known that it is not acceptable in the workplace, and developing methods for training staff and handling complaints.

Specific actions employers can take include the following:

- Don't deny that sexual harassment could happen in your workplace. Be alert to what is happening among employees, and be ready to remind persons of appropriate behavior.
- Be sure that your own actions set an example of appropriate, business-like conduct. Even if you, as an owner or manager, do not harass, looking the other way when it occurs appears to give it your stamp of approval.
- Have a written policy prohibiting sexual harassment in your workplace. The policy should define prohibited behavior, inform employees of whom to contact with a sexual harassment complaint, and spell out disciplinary actions for those who violate the policy. Communicate this policy to all employees individually and post throughout the workplace.
- Be aware of the liability incurred by the employer for the actions of managers and supervisors, co-workers, and non-employees.
- Include sexual harassment awareness as part of orientation and training of new employees, particularly supervisory and management staff.

What Employers Need To Do When a Sexual Harassment Complaint is Filed

Once an incident of sexual harassment has been made known to the employer, the employer must take prompt investigative action. This is key to an employer's defense, and may lessen or cancel their liability if the matter comes to litigation. The employer should have a plan or specific procedure in place for dealing with complaints. Points to consider include:

- Take any complaint seriously, and inform the complainant that you will take **prompt** action to investigate the matter. Do not brush off the allegations with protests that it couldn't possibly be true.
- Designate and train the persons who are to receive complaints. If possible, more than one should be trained, including at least one female. Since most victims are female, they may feel reluctant to discuss the situation with a male manager. In situations where there might be a conflict of interest or an appearance that an unbiased decision is not possible, the employer may want to employ an independent investigator.

Conducting the Internal Investigation

- Request that the complainant prepare a written statement detailing the events: who did the harassing; exactly what was said or done; how the complainant reacted or responded; where the harassment took place; names of any witnesses; and whether the incident was an isolated event or part of a pattern. The interviewer should go over this with the complainant in detail.

- Assure the complainant that the matter will be kept as confidential as possible. Absolute confidentiality may not be possible if very detailed or specific questions must be asked of witnesses. Persons interviewed during the investigation should be requested not to discuss the matter with other employees.

- In some severe situations, the parties may need to be immediately separated by making a job transfer or placing the complainant on paid leave.

- Inform the alleged harasser of the charge and give that person an opportunity to respond.

- Interview possible witnesses, other persons in the work group, or other persons supervised by the alleged harasser for any corroborating evidence.

- Make a determination as to the truth of the claim. Consider the credibility of each party, their possible motives for lying, and the observations of other employees.

- If evidence supports the charges, take prompt action against the harasser according to company disciplinary policies.

- Be aware that retaliation against a person for filing a complaint or participating in an investigation is prohibited by law.

- Be aware of the need for healing in the workplace. The complainant has suffered emotionally from the situation. Action may be needed to stem rumors or stories that have spread. Firing of a popular supervisor may upset employees, especially when the circumstances are not fully known, and cannot be fully explained because of confidentiality. Even if the harassment allegations are found to be unsupported, human relations intervention may be necessary to repair damaged working relationships.

- If a complaint is filed with an enforcement agency, respond promptly and fully to their requests for information. You may wish to consult legal counsel.

Sometimes questions are raised about persons making false accusations or frivolous complaints. The person who files a sexual harassment complaint has much to risk, personally and professionally, by coming forward. It would be rare for a person to take these risks by making a false accusation. This does not mean that every

charge of sexual harassment will be upheld, but it means that in the victim's perception there was a problem they believed to be sexual harassment.

In summary, sexual harassment is a problem that can have serious economic and intangible effects for both the victim and the accused harasser/employer. Only a concerted effort by employees and employers to stop inappropriate behavior in the workplace will help to solve the problem.

Harassment for Other Reasons

While harassment because of sex is most talked about, harassment because of other protected characteristics such as race, national origin, religion, age or physical and mental disability is also prohibited under state and federal laws. Employers should be aware that harassment for these reasons may result in a hostile work environment. Persons victimized by any of these types of harassment may also file a complaint with an enforcement agency, if the employer has not taken action to resolve the problem.

Resources

Books

Equal Employment Opportunity Compliance Manual, 3 vols., Warren Gorham Lamont, Boston, 1992.

Primer on Sexual Harassment, by Barbara Lindemann and David D. Kadue; Bureau of National Affairs, Washington, DC., 1992.

Power and Gender: Issues in Sexual Dominance and Harassment, by Rosemarie Skaine, McFarland & Co., Jefferson, NC, 1996.

The Sexual Harassment of Women in the Workplace, 1600 to 1993, by Kerry Segrave; McFarland & Co., Jefferson, NC, 1994.

Stopping Sexual Harassment: A Handbook for Union Workplace Activists, by Camille Colatosti and Elissa Karg, Labor Notes, Detroit, MI, 1992.

Videos (available from ICRC)

Beyond Sexual Harassment: Other Forms of Harassment. American Media, Inc. 1995.

Bob's Ms Adventure: Sexual Harassment from a Different Perspective. Excellence in Training Corp., 1994.

Subtle Sexual Harassment Series. Part I: The Issue is Respect. Part II: Management's New Responsibilities. Quality Media Resources, 1992.

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