

Prevention of Sexual Harassment

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Defining Sexual Harassment

The Equal Employment Opportunity Commission defines sexual harassment as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature. The courts will consider the frequency and the severity of the behavior, whether it is physically threatening or humiliating, and whether the behavior is used to make employment decisions either positive or negative (i.e. promote or fire), and whether it affects the employee's ability to do their job.

Words or gestures that have a sexual content fall within the definition. For example, staring, leering, wiggling your tongue might be construed as sexual behavior. Posting a nude centerfold at your workstation may also be sexual harassment because it may be offensive to others.

The common view is that sexual harassment involves a male supervisor and a female employee. The supervisor tells the female employee that to get promoted or be treated better requires that she sleep with him. This is ***quid pro quo sexual harassment***. There is no dispute about the behavior being sexual harassment but it may be the least common form of harassment.

Quid Pro Quo – Submission to sexual demands as a condition of employment. The threat is spoken or unspoken. Failure to comply can result in loss of job, unfavorable evaluations, and loss of promotions.

The hostile working environment is more common and more subtle. Harassing conduct takes the form of unwelcome sexual touching and comments. Behavior can include flirting and joking if the behaviors are repeated, unwelcome, offensive, and involves sexual content.

Some behaviors that might seem ordinary are, in fact, forms of sexual harassment. Telling dirty jokes, and no one objects, would probably not be sexual harassment, but if someone objected and the joker persisted with off-color stories in that listener's presence, then a case for harassment might be made.

You may compliment someone on their appearance or attire but be certain that it will not offend them or be misinterpreted by someone who might overhear your conversation. If the person resents the compliment or any attention to his or her appearance, choose your words carefully and apologize if necessary. To be safe the best bet is to avoid compliments on appearance or attire.

About 21% of harassment cases within Veterans Affairs involve women who are alleged to have harassed men. Frequently those incidents involve supervisors who pressure a male for a date or monitor their activities at work and off duty. Many acts do not have to be repeated or depend on the victim to object to be considered sexual harassment. For example, a male coworker who obviously brushes against a female employee touches her hair and blows in her ear.

The New Jersey Supreme Court noted that there are differences in the way sexual comments and conduct on the job are perceived by men and women. According to court rulings, certain conditions have to be met for the behavior to be sexual harassment. The behavior:

- **Has to be unwelcome:** If two people are joking around, each telling dirty stories or making comments with sexual innuendos, that may not constitute SH; however, it is inappropriate behavior and may be offensive to a third party.
- **Can be physical, verbal, or nonverbal:** Sexual harassment does not have to involve physical touching. Words alone may be harassing. Similarly, a leer or facial expression or body gesture may constitute harassment under certain circumstances.
- **Has to be sexual in nature or directed primarily at one sex:** Sexual harassment is one form of discrimination, but not all sex discrimination is sexual harassment. If the conditions affect only one sex, it may be possible that the working environment might be regarded as sexually harassing, but it is more likely to be a case of sex discrimination due to gender.

Sexual harassment is against the law. Victims are suing in court and winning substantial sums from employers who permit sexual harassment in the work environment, and from individuals (supervisors and fellow employees) who commit the harassment.

Recognizing Sexual Harassment

There are four situations that commonly arise in sexual harassment complaints:

- A supervisor who suggests that employment decisions about promotions, rating, wage, and so forth depend on sexual favors (this is the *quid pro quo*).
- A co-worker (including a supervisor) who's sexually explicit remarks or behavior is repeated and unwelcome.
- A workplace where sexually explicit pictures are displayed or conversations with a sexual content are common, although not directed at a particular person.
- A supervisor whose negative words or behavior are directed primarily at one sex, and are sexual in nature. Any statement such as "this is man's work: or "what do you know, you are only a girl" or "you would not understand – it is a female thing" may not be sexual harassment but falls into the category of disparate treatment based on gender or sex discrimination.

The important thing is not the intent of the person doing the behavior, but the attitude and response of the other person. Words or behaviors that one person finds amusing or inoffensive, another person may find embarrassing or humiliating. The standard used by the courts is: would a reasonable person have been offended, intimidated or humiliated by the behavior?

If you believe you are a victim of sexual harassment contact your supervisor, and/or the facility's Equal Employment Opportunity (EEO) Counselor; the EEO Counselor in the Office of Resolution Management, a union representative if a member of the bargaining unit, or the Office of Inspector General. Allegations of such conduct will be responded to immediately, appropriately, and with the seriousness they deserve. Allegations involving management may be reported to a higher level official.

Remember, communicating with the individual responsible for the harassment and asking that the behavior stop is considered the most effective approach for stopping such unwanted behavior. Communication is the key to early resolution.

If you are a witness to an incident, which could be construed to be sexual harassment, you have an obligation to report the behavior to the appropriate officials.

Department of Veterans Affairs

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Prevention of Sexual Harassment

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