

SEXUAL HARASSMENT RESOURCE INFORMATION
FOR
MLC Graduates

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Definitions and Training Terminology

Sexism

A set of attitudes and beliefs that says one sex is superior to another sex.

Examples:

- A woman **thinks** that all men are sexists/chauvinists.
- A man **thinks** that women should not work as a maintenance “man” or in a capacity to instruct a man.

Sex Discrimination

A behavior. It is basing **employment decisions on an employee’s sex** and/or **treating employees differently because of their sex**, rather than basing employment decisions or the treatment of employees on their work experiences and qualifications.

Examples:

- A senior manager will not hire a more qualified male as his secretary.
- A male in a coed workplace is expected to move the boxes of computer paper because this is “man’s work”.
- Male managers exclude women from informal communication networks, lunches, and ad hoc reports.

Sexual Harassment

A behavior. It is **unwelcome behavior of a sexual nature** that creates legal liability for the employee(s) engaging in the behavior, manager(s) and/or WELS.

The Equal Employment Opportunity Commission’s 1980 guidelines on sexual harassment identified two types of sexual harassment, quid pro quo and hostile work environment.

“Subtle” Sexual Harassment

Note: “Subtle” sexual harassment is **not a legal** but a practical term that can be used to recognize the early stages of sexual harassment.

A behavior. It is **unwelcome behavior done to a person because of his/her sex** that WELS considers to be inappropriate. This behavior, if allowed to continue, could create legal liability.

Examples of Inappropriate Behavior

Verbal

- Calling a person a hunk, doll, babe, or honey
- Turning work discussions to sexual topics
- Asking unwelcome personal questions about social or sexual life
- Asking about sexual fantasies, preferences, or history
- Making sexual comments about a person's clothing, body, or looks
- Making kissing sounds, howling, smacking lips
- Telling lies or spreading rumors about a person's sex life

Non-Verbal

- Staring at or looking a person slowly up and down
- Blocking a person's path
- Restricting, hindering the other person's movements
- Sexual and/or derogatory comments about men/women on coffee mugs, hats, clothing, etc.
- Making facial expressions, such as winking, throwing kisses, or licking lips
- Making sexual gestures with hands and/or body movements
- Unwelcome letters and gifts
- Giving items of a sexual or sexually derogatory nature
- Invading a person's body space; standing closer than appropriate or necessary for the work being done

Physical

- Massaging a person's neck, shoulders, etc.
- Unwelcome hugging or touching the person's clothing, hair, or body
- Kissing or stroking
- Touching or rubbing oneself sexually around or in the view of another person
- Brushing up against a person
- Goosing, caressing, or fondling

Five Step Process to Identify “Subtle” Sexual Harassment

The following Five Step Process can assist you in evaluating sexual behavior done to an employee because of his/her sex when no one complains but there may be “subtle” sexual harassment.

Step One

Identify the people involved in the interaction.

Usually it will be obvious who is directly involved in the interaction. It is also necessary to determine if there are third parties present who could also be affected by the behavior.

Step Two

Determine their relationship.

Do the people involved have a typical work relationship, i.e., they talk primarily about work related issues and don't socialize outside of the workplace except at work related events or a good friendship.

Note: People do not usually welcome behavior of a sexual nature from others with whom they have only a typical work relationship.

If the people have a good friendship and they are engaged in sexual behavior, their behavior could still create a hostile work environment for other employees.

Step Three

Objectively describe the behavior.

Describe specifically what happened. Include the behaviors of all the people identified in Step One.

Step Four

Determine is the behavior described in Step Three was welcome.

Use the following methods:

- A. Does (Do) the recipient(s) clearly indicate verbally and/or non-verbally that the behavior is unwelcome? If yes, go to Step Five. If not, go to B.
- B. Does (Do) the recipient(s) equally initiate the behavior, i.e., sometimes behave that same way to that person first or ask to hear sexual jokes, to get a hug, etc.? If your answer is no, go to Step Five. If it is yes, go to C.
- C. Does (Do) the recipient(s) equally participate in that behavior, i.e., engage in the same or very similar behavior to the person initiating the behavior? If your answer if no, go to Step Five. If it is yes, go to D.
- D. It is doubtful that either person is being sexually harassed. But their sexual behavior could be unwelcomed to a third party. If the behavior described in Step Three is sexual and the third party person(s) does (do) not appear to equally participate in and initiate that behavior and is not a good friend of the people doing that behavior, it probably is unwelcome. That situation should be dealt with to ensure that third party sexual harassment does not occur.

Important

To determine if behavior is welcome, it is important to focus on the impact of the behavior, not the intent of the person doing the behavior. **Avoid** “Yes...but...”, i.e., “Yes, she touched him, but that is her personality.” “Yes, he makes sexual comments, but he’s harmless.” “Yes...” is an **objective** description of the behavior while “but...” is a **subjective** reaction that often makes excuses for the person initiating the behavior and stops the objective process of determining if the sexual behavior is welcome.

Step Five

Is the unwelcome behavior sexual or done to an employee because of her/his sex?

If the behavior is obviously sexual or if it is derogatory about men or women, it is sexual harassment.

If the behavior is similar to the examples of sexual harassment listed in this material or dramatized in the visual presentation, then that behavior is sexual harassment.

Would the recipient be subjected to that behavior if she/he were of the opposite sex of what she/he is, i.e., males who look a woman up and down when she walks by them would not behave in the same way when a man walked by. If not, then it is sexual harassment.

Why Recipients Do Not Talk About Sexual Harassment

If you have never been sexually harassed and been afraid to talk about it, it will be very difficult to understand how difficult it can be for a recipient of sexual harassment to talk about it. Keep the following reasons in mind when monitoring your workplace or talking with an alleged recipient who is reluctant to be specific about what happened or who has waited months or years before talking about the incidents.

Common reasons are:

- They do not want to get their harasser in trouble, just want him/her to stop certain behavior.
- They are unsure of whom to talk with about the situation.
- They don't believe they will be taken seriously.
- If they ignore the behavior, they think it will go away or stop on its own accord.
- They think they will be told they are overreacting.
- They may feel they have to accept it because that is the way things are here.
- They are told they aren't team players if they don't go along with the behavior.
- They are very embarrassed and don't want to talk about it with anyone.
- They fear reprisal from the harasser, especially if that person is their boss or a representative of management.
- They are afraid of being told that they "asked for it" because of their clothing or behavior.
- They blame themselves.
- Some women were told, "Be a good sport," "Can't you take a joke?", "Boys will be boys," or "You've got to expect that in a traditionally male job."
- The organization's sexual harassment resource person has a reputation for not taking reports seriously.
- They are reluctant to talk to someone because no one else seems to mind the harasser's behavior.

What To Remember When You Talk With An Alleged Recipient of Sexual Harassment

Keep these insights in mind about the emotional state of alleged recipients when you interview them.

- The recipient often feels that her/his organization's sexual harassment compliant process is not geared toward protecting the complainant but toward protecting the employer and management.
- Often the complainant has been "gunnysacking," (i.e., saving up, not acknowledging, etc.) her/his feelings about what has happened to her/him and may need to cry or express anger about what happened.
- The complainant may be vague or have trouble remembering specifics when he/she initially tries to talk about the sexual harasser. Be patient, listen, and ask clarifying questions.
- Make it clear to the alleged recipient that your role is to be impartial. Do not appear that you believe or disbelieve her/him or that you are trying to prove her/him right or wrong. In some situations, your role early in the investigation process may be that of an empathetic listener.
- When interviewing the alleged recipient, the interviewer needs to keep in mind that the alleged recipient might feel powerless and traumatized by the sexual harassment.
- Don't let "pencil and paper" or getting the "facts" get between you and the person you are interviewing.
- Don't make statements that judge the degree of seriousness, e.g., "That sounds very serious," or "That couldn't have been too bad."

Legal Basis of Sexual Harassment

Title VII of the 1964 Civil Rights Act, as Amended in 1972

Sexual harassment is a violation of federal law. Title VII specifically prohibits employment discrimination based on religion, color, national origin, race, and sex. Sexual harassment is a type of sex discrimination.

The Equal Employment Opportunity Commission (EEOC), a federal agency, issued sexual harassment guidelines in 1980. The EEOC defines sexual harassment as

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

These behaviors constitute sexual harassment when certain criteria are met:

Criterion I:

Submission to such conduct is made either implicitly or explicitly a term or condition of employment.

Criterion II:

Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.

Quid Pro Quo

Employment and/or employment decisions that are conditioned on an employee's acceptance or rejection of unwelcome sexual behavior.

Example: A female employee complains to her supervisor about her male co-worker's sexual jokes. The supervisor tells her that's how it is around here; if you don't like it leave.

Note: That is quid pro quo because accepting her co-worker's unwelcome sexual jokes is a condition of her working there.

Criterion III:

Such conduct has the purpose or effect of unreasonably interfering with the individual's work performance or creating an intimidating, hostile, or offensive working environment.

Hostile Working Environment

Unwelcome sexual behavior that creates an **offensive, hostile, or intimidating work environment** and that **adversely affects an employee's ability to do his or her work.**

State Fair Employment Laws

Most states have fair employment or anti-discrimination laws that prohibit sexual harassment. These laws are usually patterned after, but sometimes extend beyond the definition of the EEOC's sexual harassment guidelines.

INDIVIDUALS WHO ENGAGE IN ACTS OF SEXUAL HARASSMENT MAY ALSO BE SUBJECT TO CIVIL AND CRIMINAL PENALTIES

Civil Lawsuits

Managers and employees can be named personally as co-defendants in a sexual harassment lawsuit. If it is determined that the sexual harassment occurred and that the co-worker did the sexual harassment, that co-worker can be required to pay a portion of any judgment awarded in the case.

Civil Rights Act of 1991

The Civil Rights Act of 1991 makes major revisions to Title VII, and overturns seven Supreme Court decisions that were decided in 1989 through 1991. The most significant change for victims of sexual harassment is that compensatory damages for emotional distress and punitive damages are now permitted under Title VII, whereas previously only back pay was permitted to be recovered. Since for many victims of sexual harassment, there is little or no back pay and the major harm is emotional, this change made a significant difference. There is, however, a cap placed on damages based on the number of employees the employer has. If there are 60-100 employees, there is a \$50,000 cap; 101-200 employees, a \$100,000 cap; 201-500 a \$200,000 cap; and over 500, there is a \$300,000 cap. The Civil Rights Act also extends coverage of Title VII to American citizens employed by American-owned or controlled companies that operate overseas. This provision overturns a 1991 decision holding that Title VII did not apply to U.S. citizens working for American-owned companies abroad.

Manager's Liability

Managers are responsible for resolving sexual harassment situations when they know about or should know about them. Managers can be personally liable if they do not take appropriate corrective actions to resolve those situations.

Know About

The employee complains directly to her/his supervisor about sexual harassment. The supervisor does not take the complaint seriously, discourages the employee from complaining, or doesn't do anything because the employee said, "Don't do anything."

Should Have Known

Courts have held employers liable for sexual harassment situations that they **should have known** existed and did not take action to determine if sexual harassment was occurring and did not stop it when it was.

These are a few ways that employers could get knowledge of potential sexual harassment situations that would meet the **should have known** standard:

- An employee tells his manager that he has heard rumors that another manager makes sexual advances towards all of the new female employees.
- A supervisor sees sexual visuals and hears sexual jokes and comments that are derogatory about women in his workplace.

The Reasonable Woman Standard for Hostile Work Environment

In 1991, the Ellison vs. Brady case in the 9th Circuit Court of Appeals identified an additional standard for determining when unwelcome sexual behavior can create a hostile work environment: Would a reasonable person of the victim's same sex find that behavior hostile, offensive, or intimidating and adversely affect her/his ability to do her/his work? Previously, the standard was a reasonable person; i.e., would a reasonable person find the unwelcome behavior to be hostile, intimidating, or offensive; and would it adversely affect his or her ability to do his or her job.

The "reasonable woman" standard acknowledges that what a reasonable man and a reasonable woman would find intimidating are often different. A "reasonable man" seldom avoids walking past a construction site and does not usually look in his back seat before entering his car at night. However, a "reasonable woman" often avoids walking past a construction site and usually looks in her back seat before getting into her car at night. Though the same situations may exist for men and women, they often react to them differently.

703 Sexual and Other Unlawful Harassment

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WELS is committed to providing a Christian work environment that is free from all forms of discrimination and conduct that can be considered harassing, coercive, or disruptive, including sexual harassment. Actions, words, jokes, or comments based on an individual's sex, race, color, national origin, age, disability, or any other legally protected characteristic will not be tolerated.

Sexual harassment is defined as unwanted sexual advances, or visual, verbal, or physical conduct of a sexual nature.

If you experience or witness sexual or other unlawful harassment in the workplace, report it immediately to your supervisor. If the supervisor is unavailable or you believe it would be inappropriate to contact that person, you should immediately contact the Human Resources Director or any other member of management. You can raise concerns and make reports without fear of reprisal or retaliation.

All allegations of harassment will be quickly and discreetly investigated. To the extent possible, your confidentiality and that of any witnesses and the alleged harasser will be protected against unnecessary disclosure. When the investigation is completed, you will be informed of the outcome of the investigation.

Any supervisor or manager who becomes aware of possible sexual or other unlawful harassment must immediately advise the Human Resources Director so it can be investigated in a timely and confidential manner. Anyone engaging in sexual or other unlawful harassment will be subject to disciplinary action, up to and including termination of employment.