

Sexual Harassment

What is Harassment?

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What is Sexual Harassment?

Sexual harassment is conduct of a sexual nature, which is unwelcome, not asked for, and not returned. This is a form of sex discrimination. Sexual harassment can consist of any form of verbal, non-verbal, visual, or physical conduct. Such behavior includes, but is not limited to: sexually offensive comments, offers, slurs, innuendos, leering, oogling, posters, cartoons, or drawings; physical conduct such as touching, pinching, or brushing against another body; or demands for sexual favors.

Criteria used to determine sexual harassment:

- Submission to such conduct is made either as an explicit or implicit condition of employment;
- Submission to or rejection of such conduct is the basis for an employment decision affecting an individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive work environment.

What is retaliation?

To discipline, transfer, shun, or deny a promotional opportunity, training or an assignment to an employee, after he/she has filed a complaint, may be viewed as retaliation. Retaliation is unlawful.

How to file a complaint

The complaint process is designed to administratively resolve complaints in a timely manner, ensure appropriate action is taken, and minimize financial impact to the employee and the city.

An individual may file a complaint with an appropriate supervisor or manager, a departmental EEO counselor/designee, or the agency's EEO office.

Complaint Procedures

If an employee believes he/she has been subjected to any type of unlawful harassment or discrimination, he should notify the appropriate supervisor, manager, departmental EEO Counselor, or the Agency's EEO Office.

A prompt and thorough investigation into the allegations will be conducted. Individuals with direct information pertaining to the complaint will be interviewed. To the extent possible, confidentiality will be maintained.

Upon completion of the investigation, the department and the EEO Office will determine a course of action, if appropriate. The complainant will be informed of the findings and the closure of the complaint.

At any time during this process, the employee may elect to file a complaint with the outside regulatory agencies, either the Department of Fair Employment and Housing or the U.S. Equal Employment Opportunity Commission.

Sexual harassment is defined as unsolicited and unwelcome sexual advances, requests for favors and other verbal, physical, or visual conduct of a sexual nature.

Quid Pro Quo – This for that. You do this for me and I will in return do that for you.

- Sexually harassing conduct where submission is explicitly or implicitly made a term or condition of employment.
- Sexually harassing conduct where submission or rejection by an employee is used as a basis for employment decisions affecting the employee.
- This includes making reprisals, threats of reprisal, or implied threats or reprisal following a negative response. For example, either implying or actually withholding support for an appointment, promotion, or change of assignment, or suggesting a poor performance evaluation report will be prepared.
- Engaging in implicit or explicit coercive sexual behavior that is used to control, influence, or affect the career, salary, and/or work environment of another employee.

Examples:

Suggestion: "I'll give you a raise if you go out with me."

Suggestion: "I'll demote you if you don't have sex with me."

A single sexual advance may constitute harassment if it is linked to the granting or denial of employment or employment benefits.

Hostile Environment Sexual Harassment

1. Is defined as physical, verbal, or visual sexual harassment that is severe or pervasive enough to negatively affect an employee's work performance and/or create an intimidating, hostile, or otherwise offensive working environment.
- Verbal harassment – includes epithets, derogatory jokes, slurs, or unwanted sexual advances.

- Visual harassment – includes sexual gestures or leering; offensive and/or sexually-oriented posters, pictures, cartoons, objects, emails, magazines, or websites.
 - Physical harassment – includes assault and unwanted grabbing, holding, or touching.
2. “Gender based acts” of physical aggression, intimidation, hostility, or unequal treatment can constitute a hostile environment if sufficiently severe and pervasive.
 3. To determine whether the environment was sufficiently severe and pervasive to alter conditions of the victim’s employment and create an abusive working environment, the following factors are considered:
 - Was the contact verbal or physical?
 - How frequently was the conduct repeated?
 - Was the conduct hostile or patently offensive?
 - Was the harasser a co-worker or supervisor?
 - Did others join in perpetrating the harassment?
 - Was the harassing directed at more than one individual?

Harassment will be evaluated from the objective of a reasonable person of the same sex as the victim. This is the so called “reasonable woman” test. The courts realized that because of the unique historical and environmental issues, women react to sexual comments or conduct in a different way than men.

As one federal appellate court stated: “We adopt the perspective of a reasonable woman primarily because “We believe that a sex-blind reasonable person standard tends to be male-based and tends to systematically ignore the experiences of women”

It is critically important to understand that intent is not relevant in determining whether or not a behavior is sexual harassment. What matters is the impact of the behavior on the work environment. The statement, “I didn’t mean anything by it,” is not a valid defense to harassing behavior.

Sexual Harassment can occur:

- Between the supervisor and subordinate
- Between coworkers
- Between employees and non-employees
- Between members of the same sex
- On the basis of gender identity
- On the basis of sexual orientation

Examples of sexual harassment:

(These may be made in person, voicemail, email, notes or letters)

- Verbal expressions/nicknames
- Compliments/remarks about body or clothes
- Asking somebody out who has already turned you down
- Suggestive or obscene notes, poems, or love letters
- Gifts
- Epithets, slurs, profanity, or sexual insults (regardless of gender)
- Discussion of inappropriate/personal issues
- Prying about the individual's personal or sex life
- Spreading rumors of a sexual nature
- Sexual propositions
- Teasing (including teasing based on sexual orientation or perceived sexual orientation)
- Jokes/double entendres
- Comments about anatomy
- Comments about harasser's sex life
- Sexist comments

Is it really harassment?

- A. Could this behavior offend or hurt other members of the work group subjected to it?
- B. Could this behavior be misinterpreted as intentionally harmful or harassing?
- C. Could this behavior be sending out signals that invite harassing behavior on the part of others?
- D. Was the comment/conduct undertaken by a person in power over the possible victim?
- E. Would you make this comment or demonstrate this behavior in front of your spouse, significant other, parent, or child?
- F. Would you be embarrassed to see your remarks or behavior written in the local newspaper for your neighbors to see?

Rule of thumb: When in doubt, DON'T