

Sexual Harassment

A GUIDE FOR SUPERVISORS AND EMPLOYERS

A solid green horizontal bar at the bottom of the page.

Objectives

- Learn the definition and kinds of sexual harassment
- Understand your role and responsibilities
- Learn how to report harassment, respond to employee reports and investigate complaints
- Learn to recognize potential harassment situations

What is Sexual Harassment?

DEFINING AND UNDERSTANDING SEXUAL HARASSMENT

A solid green horizontal bar at the bottom of the slide.

Definition

“Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.”

Breaking it Down

Sexual harassment can include:

- Different kinds of behaviors
- Different kinds of motivation
- Different kinds of harassers
- Different kinds of victims

Breaking it Down

“Unwelcome sexual advances and requests for sexual favors”

- Behaviors that are not invited or solicited
- If told to stop, behavior is unwelcome
- Unwelcome requests not limited to supervisor/subordinate relationship

Breaking it Down

“Verbal or physical conduct of a sexual nature”

- Catcalls, whistles, nicknames
- Gestures, “elevator eyes”
- Unwelcome compliments or attention
- Shoulder rubs, caressing, hugging, standing in someone’s way
- Displaying swimsuit calendars, sexual objects

Breaking it Down

“When this conduct explicitly or implicitly affects an individual’s employment”

- “Quid Pro quo” or “This for that”
- Between a supervisor, manager or employer and a subordinate
- Company is held liable for the supervisor’s actions

Breaking it Down

“Unreasonably interferes with an individual’s work performance, or creates an intimidating, hostile, or offensive work environment”

- Anyone can be harasser: supervisor, subordinate, peer, customer, vendor, etc.
- Third parties can be victims as well.
 - Jenny may like Bob’s lewd jokes, but Dave in the next cube may find them offensive.
- Judged by the reasonable person standard
- Impact, not intent

When Is It Sexual Harassment?

DETERMINING SEXUAL HARASSMENT

A solid green horizontal bar at the bottom of the slide.

When is it Sexual Harassment?

Reasonable Person Standard

- Judge from the perspective of the victim, not the harasser.
- Could a reasonable person view this behavior as intimidating, hostile or offensive?

When is it Sexual Harassment?

Intent vs. Impact

- The harasser's intent isn't the standard by which harassment is judged.
- The impact of the behavior—whether intended or not—is what determines sexual harassment.

When is it Sexual Harassment?

When considering conduct, ask:

- How severe is the conduct?
- Is it welcome or unwelcome?
- Would a reasonable person find it intimidating, hostile or offensive?

Prevention and Investigation

CREATING AND MAINTAINING A HARASSMENT-FREE WORKPLACE

A solid green horizontal bar at the bottom of the slide.

What's at Stake?

- Federal or State Investigation
 - Sexual Harassment is prohibited under Title VII and Title IX of U.S. Civil Rights Act
- Civil Liability
 - If supervisors commit sexual harassment or allow it to occur
- Harassment negatively impacts workplace morale and productivity

Prevention

- Distribute and review company's sexual harassment policy with employees and supervisors.
- Be proactive—zero tolerance for sexual harassment.
- Establish a system for reporting and investigating claims of sexual harassment.

Investigation

- Supervisors must document and investigate all claims of sexual harassment.
- Remain objective and gather facts.
- Talk to other employees, consult work schedules and examine emails.
- Don't make promises you can't keep.
 - Complete confidentiality may be impossible.

Reluctant Employees

- Fear of retaliation from harasser
 - Afraid of being seen as a troublemaker
 - Ask to handle it themselves
 - Embarrassed about being a victim
-
- All of your employees deserve a workplace free from harassment and intimidation

Retaliation

- Illegal to retaliate against an employee who filed a claim of sexual harassment or participated in an investigation of a claim
- Any adverse employment action an employee suffers after the claim could form the basis of a lawsuit claiming retaliation
- Even if investigation determines there was no sexual harassment

Case Studies

HOW WOULD YOU REACT?

Questions to Consider

- How severe is the conduct?
- Is the conduct welcome or unwelcome?
- Who else might the conduct be affecting?
- Would a reasonable person consider the conduct intimidating, hostile or offensive?
- What would you do?
- How would you react if you encountered this conduct?

1. Discussing the Future

Mike hired Sue straight out of college. He's always been very attentive, commenting on her appearance and telling her how nice her body is. One day, Mike calls Sue into his office and tells her he'd like to go out for drinks after work to discuss a possible promotion. Sue is excited about the possible promotion, but politely declines. She tells Mike she'd like to keep their relationship professional.

1. Discussing the Future (cont.)

Almost immediately, the comments stop, but so does any attention from Mike. The promotion ends up going to someone else, and, a couple of months later, she receives a poor performance review.

Is this sexual harassment?

2. A Sense of Humor

Everyone at work seems to like Matt. He's friendly and outgoing, and the lunchroom echoes with laughter at his jokes. Heather doesn't mind the jokes sometimes, but, lately, they've been getting really raunchy and sexually explicit.

2. A Sense of Humor (cont.)

One day after lunch, Heather approaches her supervisor, Joe. She explains that she finds Matt's jokes offensive and that his language makes her uncomfortable. Joe reminds her that everyone else on the team seems to enjoy the jokes, that Matt's not targeting her, and that they're just jokes. Maybe she just needs to lighten up and have a sense of humor.

Is this sexual harassment?

3. Landing the Account

Kevin just heard that he didn't land the big sales account. Once he found out that his co-worker Jack was gunning for the account, he knew he didn't stand a chance. Considering how friendly their supervisor Pam has been with Jack around the office, it seemed inevitable Jack would get the account. The only thing Kevin didn't know was just how friendly Jack and Pam were.

4. Private Area

Bill, the manager of the auto shop at a dealership, calls Jim into his office. Jim is one of his most talented, veteran mechanics. Jim pretty much keeps to himself during the day, preferring to get his work done rather than socialize. Still, Bill has a problem. Last week, Carole, who was recently hired to work in the parts department, complained to Bill about the pin-up calendar Jim had displayed in his work area.

4. Private Area (cont.)

When Bill asks Jim to take the calendar down, Jim bristles. Jim reminds Bill of the years of service he's put in. He says that he didn't force Carole to look at anything, and, if she doesn't like it, she doesn't have to come over and deliver parts to him. It's his private work area, anyway. So what's the big deal?

Is it harassment? Is Jim right? Or is Bill?

5. Didn't Say a Word

Every day, Marcus whistles when Claire passes by his desk. He rarely ever speaks to Claire, but Marcus always seems to have his eyes on her. He stares, bites his lip or grunts. It's begun to make Claire feel very uncomfortable, to the point where she walks all the way to the other side of the office to avoid passing his desk.

Is this sexual harassment?

6. Man Up

Dan has been having a hard time in the warehouse. A couple of weeks ago, Dan accidentally dropped a box he was carrying. Brad, one of his co-workers, joked that Dan was too weak to work it. Since then, other co-workers have joined in the taunting, calling him “weak,” “girly-man” and “sissy.”

6. Man Up (cont.)

He went to his supervisor, Tom, to complain. Tom told Dan that the comments were “stupid,” but he needed to learn how to stand up for himself and “man up” if he ever wanted his co-workers to respect him.

Is this sexual harassment? Is Tom right? How would you handle this situation?

7. Just Dinner

Practically every day for the past two months, Marcus has been asking Cheryl out to dinner. At first, it seemed innocent enough, and Cheryl thanked him for the invitation but politely declined. She told Marcus she wasn't interested in pursuing a romantic relationship. She thought that would be the end of it, but, the next day, he asked again.

7. Just Dinner (cont.)

Marcus was persistent, asking her day after day. He's never said anything mean or threatening, but he just won't take "no" for an answer. Marcus is convinced that, eventually, Cheryl will change her mind. After all, he isn't asking for much—just dinner.

Is this sexual harassment?

8. A Big Tipper

Olivia is the newest hire at the restaurant, and, so far, she's been doing a great job. One night, she looks into the dining room and feels her stomach sink. She approaches Laura, her supervisor, and says that Greg just got seated at one of her tables. Olivia explains that Greg, a regular, has been making comments about her body, asking her on dates and touching her when she walks past the table.

8. A Big Tipper (cont.)

Laura nods, knowingly, and explains that some customers can be like that, but Olivia needs to act like a professional and remember that the most important thing is good customer service. Plus, Greg is a notoriously big tipper. When Olivia asks if another waitress can serve him, Laura frowns. She tells Olivia that she needs waitresses who will serve ALL of the customers.

Is this sexual harassment?

Summary

WHAT WE'VE LEARNED

Objectives - Revisited

- Learn the definition and kinds of sexual harassment
- Understand your role and responsibilities
- Learn how to report harassment, respond to employee reports and investigate complaints
- Learn to recognize potential harassment situations

Further Resources

- Equal Employment Opportunity Commission (EEOC)
- Human Resources
- Company's Sexual Harassment Policy