



Prevent Sexual Harassment for Employees



“ Respect for self.
Respect for others.
Responsibility for all your actions.”
~ Dalai Lama

Participant Guide

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SAMPLE

Learning Objectives

Specifically, when you complete this training, you should be able to:

- Recognize sexual harassment in the workplace.
- Understand the effects of sexual harassment and the liabilities.
- Identify types of sexual harassment.
- Differentiate between welcome and unwelcome behavior.
- Be aware of the potential links between sexual harassment and violence.
- Know what to do if you experience sexual harassment.

Introduction

Sexual harassment in the workplace is against the law. No workplace is immune. Sexual harassment is not just political correctness. It can harm individuals and entire workplaces. The goal of this training is to raise participant's awareness on key issues related to sexual harassment. You will learn what sexual harassment is, what it is not, and who has liability when it occurs. You will also learn what to do if you are sexually harassed or if you witness sexual harassment.

Title VII of the Civil Rights Act of 1964 was the first federal law to prohibit discrimination based on sex. Sexual harassment in the workplace is one form of discrimination because of sex. Title VII also prohibits employment discrimination on the basis of race, color, national origin, and religion. It applies to employers with 15 or more employees.

Since Title VII, many states have enacted laws that expand upon the federal laws and provide protections for most workplaces.

Sexual harassment sometimes can lead to behavior that is criminal including stalking, threatening and violence

Sexual harassment in the workplace can have significant and adverse impact on both the employer and workers: it can negatively affect productivity, morale, absenteeism and the general health and well-being of workers in the workplace, and can result in increased turnover, complaints of discrimination, potential incidents of anger and physical confrontation, potentially large legal fees and a poor corporate image for the employer.

REFLECTION ACTIVITY 1

Can you think of some reasons why you are required to take this training?

The Workplace

Employers and workers may also be held liable for incidents of sexual harassment that occur outside normal business hours or off-site but are related to the workplace and impact employment. This includes using texting, email or other social media (such as Facebook) to make offensive, suggestive jokes/remarks or continue pursuing a co-worker who has refused your advances at work.

Example:

At a staff holiday party, a young administrative assistant makes it clear that she is happily in a monogamous relationship with her fiancé. Despite this, the married senior manager sexually solicits her in the parking lot after the event.

REFLECTION ACTIVITY 2

Do you think this behavior is sexual harassment? Why or why not?

Responsibilities and Liabilities for Sexual Harassment

We are all responsible at some level to our employers and fellow workers. Liability means responsibility at a legal level.

Employer

Employers are responsible for providing a working environment free from discrimination including sexual harassment.

Employers are liable where sexual harassment results in tangible employment action, including for example, discipline, demotion and termination. Employers can also be held liable for hostile work environments related to sex.

Where liability is found, employers are required to make the worker “whole” again. This can include compensatory damages, for example by placing the worker in the job that was lost or paying lost wages. The employer also may be required to pay emotional damages or punitive damages. The amount of damage awards vary widely (from thousands to hundreds of thousands of dollars) depending on the circumstances.

To limit their potential liability employers are advised to

- Create internal policies and procedures to address workplace harassment
- Train employees, especially supervisors
- Promptly investigate complaints and implement remedies where required

It is important for employers to understand that sexual harassment is addressed by civil law, where the standard of proof is lower than “beyond a reasonable doubt” as found in criminal courts. Cases are decided on a balance of probabilities. In other words, if a judge finds that it is more likely than not that sexual harassment took place, then the employer will be liable.

Similar fact evidence is also sometimes admissible in a civil proceeding. For example, where more than one woman was found to be subjected to similar harassment by the same supervisor, their evidence may support each other’s claims.

The EEOC also takes the position that sexual harassment is unique, in that it often happens behind closed doors. Cases often turn on the complainant’s testimony in the face of straight denial by the alleged harasser. In the absence of corroborating evidence (including similar fact evidence), the credibility of the parties will be key.

Example:

A supervisor demotes a worker who refused his sexual advances. The worker files a complaint. The supervisor denies that the advance took place and there were no other witnesses. Another worker comes forward and reports that she too was demoted after refusing the supervisor’s advances in similar circumstances. A court admits this evidence, believes the complainant and finds the employer liable.

Supervisors and Workers

Federal law, Title VII, holds employers liable for violations. The question of individual liability for Supervisors and Workers has not been fully decided by the Courts.

Some state laws, e.g. the Colorado Discrimination Act, provides that it is a violation for “any person” to discriminate in employment. Thus, in some states, individual supervisors and workers can be found liable for harassment in the workplace.

Conduct that includes unwelcome touching, especially sexual touching, can cross the line into assault and be contrary to criminal laws. Of course, any person, including a supervisor or worker could be charged criminally in that circumstance.

Supervisors and workers are therefore well advised to respect the rights of other workers, to follow workplace policy and procedure regarding discrimination and harassment, and to report any concerns to their employer.