



Prevent Sexual Violence and Harassment for Employees

Participant Guide

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SAMPLE

Learning Objectives

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

- Define key concepts associated with sexual violence and harassment.
- List behaviors that constitute sexual violence and harassment.
- Identify the different types of sexual harassment.
- Differentiate between welcome and unwelcome behavior, as well as, clear and unclear behavior and recognize where the line is.
- Explain the steps for filing a complaint should you be subject to or witness sexual harassment in your workplace.

SAMPLE

Introduction

You may be thinking, “Why am I required to take this training? I already know what sexual harassment is” or “this doesn’t happen in my workplace.” But you are here today to learn about the legal definition of sexual harassment, liability, and what you can do if you believe you are being sexually harassed. Remember, no workplace is immune to sexual harassment. It can occur in any workplace, to any employee (“worker”).

Title VII of the Civil Rights Act of 1964 was the first federal law to prohibit discrimination based on gender and to prohibit unwelcome sexual conduct that leads to a hostile work environment. Since then, many states have enacted laws that expand upon the federal laws. Title VII prohibits employment discrimination on the basis of sex, race, color, national origin, and religion. It applies to employers with 15 or more employees.

Sexual harassment is illegal in the sense that it violates federal and state civil laws. But, is it ever also criminal?

Sexual harassment isn’t a criminal offense (unless it involves a crime like rape or assault) but organizations can be held liable under Title VII, a law that states you can’t discriminate against someone based on their sex.

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?

Responsibilities and Liabilities for Sexual Harassment

To some extent every worker is responsible for ensuring a workplace free from harassment.

There are different types of responsibility or liability.

1. Corporate Liability

An employer may be responsible for harassment by supervisors, workers and agents of the employer, particularly if the employer knew or should have known about the harassment and did not take action to stop it.

Once an employer is aware of harassment, it has an obligation to take immediate action. If the employer finds that allegations of harassment are substantiated, remedies need to be implemented that include a remedial component, to ensure that the behavior is not repeated in the future.

Employers and unions have an obligation to ensure that the working environment is free from sexual harassment or discrimination.

Employers are **strictly liable for any harassment by a manager that results in a "tangible employment action."** If the supervisor's harassment did not lead to a tangible employment action, the employer is liable unless it proves that: (1) it exercised reasonable care to prevent and correct promptly any harassment; and (2) the employee unreasonably failed to complain to management or to avoid harm otherwise. (Source: EEOC)

2. Supervisors and Workers

All workers, including supervisors, are responsible for their own behavior, and may be held personally liable if they sexually harass other workers or make inappropriate gender-related comments. Supervisors are liable if they knew that harassment was occurring and did not take steps to stop it.

3. 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:

A supervisor sexually propositions his administrative assistant in the parking lot after a staff holiday party.

REFLECTION ACTIVITY 2

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

Definition of Sexual Harassment

The Equal Employment Opportunity Commission (EEOC) defines sexual harassment as:

“Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when submission to or rejection of 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.”

What makes it sexual harassment is the sexualized nature of the comments or behavior.

Let's look more closely at the definition:

1. “Unwelcome ... advances, requests ... and other verbal or physical conduct ...”

The key term here is “unwelcome.” There is both a subjective and objective element to this. First, is the harasser's knowledge of how their actions or comments may be interpreted and second, is how the recipient may interpret them. Even if the harasser sincerely does not believe that their actions are offensive, they may still be found to be harassing if the recipient finds them so.

Harassment, sexual or otherwise, is any unwanted conduct, whether verbal or physical, that humiliates or offends you. Harassment can interfere with your ability to do your work, and thus can result in serious consequences in the workplace.

In simpler terms, sexual harassment can include (but is not confined to):

- Unwelcome sexual advances
- Requests for sexual favors