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Sexual Harassment

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You should not have to choose between livelihood and peace of mind.

What is Sexual Harassment?

- Title VII of the Civil Rights Act of 1964, a federal law, prohibits sex harassment in employment, including harassment based on: sex, pregnancy, childbirth, and related medical conditions.
- The EEOC (Equal Employment Opportunity Commission) is the federal agency charged with enforcing these provisions.
- Title 29 of the Code of Federal Regulations, Section 1604, contains the following definition of harassment under federal law:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:
1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment.
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.
3. Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive working environment.

Sexual Harassment Defined

- Sexual harassment takes many forms, ranging from persistent jokes of a sexual nature to physical assault.
- It happens when one person intimidates, coerces, or humiliates another person because of gender or sexual preference.
- It may involve threats that you will lose your job or that you will not be promoted.
- Sexual harassment creates confusion because the boundary between professional roles and personal relationships is blurred.
- Your coworkers, supervisors, professors, or fellow students may make you uncomfortable in your work environment because they have introduced a sexual element into the workplace.
- In accordance with guidelines issued by the U.S. Department of Education OCR (Office of Civil Rights) and the EEOC, sexual harassment has been defined as:

Unwelcome sexual advances, requests for sexual favors, and other oral or written communications or physical conduct of a sexual nature when:
1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment or academic standing.
2. Submission to or rejection of such conduct by an individual is used as a basis for employment or academic decisions affecting such individual.
3. Such conduct has the purpose or effect of unreasonably interfering with an individual’s work or academic performance or creating an intimidating, hostile, or abusive work or academic environment.
Statistics
- Currently, at least 40% of all women report being sexually harassed at some point in their career
- Men currently account for 11.6% of all sexual harassment cases filed with the EEOC

Types of Harassment
- **Gender harassment**: generalized sexist remarks and behavior which convey insulting, degrading, or sexist attitudes
- **Seductive behavior**: unwanted, inappropriate, and offensive physical or verbal sexual advances
- **Sexual bribery**: solicitation of sexual activity or other sex-linked behavior by promise of reward
- **Seductive coercion**: coercion of sexual activity or other sex-linked behavior by threat of punishment
- **Sexual assault**: assault or rape

Common Examples of Harassment
- Insistent invitations for drinks, dinner, dates, etc.
- Unwanted touching
- Sexually suggestive comments
- Obvious sexual gestures
- Uninvited visits to someone’s hotel room during conferences
- Offensive graffiti

Verbal
- Dirty jokes
- Derogatory comments, epithets, or slurs
- Requests for dates
- Suggestive noises (e.g., whistling)
- Suggestive comments
- Terms of endearment
- Comments about someone’s appearance
- Demands to submit to sexual requests
- Offering employment benefits in exchange for sexual favors
- Swearing
- Flirting
- Gossip about an employee’s personal life
- Personal questions
- Personal and inappropriate voicemail
- Threatening reprisal for rejecting sexual advances or complaining of them
Case Study #1

- In *Waltman v. International Paper Co.*, the harassment began when a coworker broadcast over the company’s public address system obscenities about the female victim, who then received over 30 pornographic notes in her locker.
- The men covered the walls of the facility and the elevator with pornographic pictures and crude remarks concerning the victim.
- In addition, one of the victim’s supervisors told her that she should have sex with a certain coworker; he also physically accosted her.
- Another employee told the victim that he would “cut off her left breast and shove it down her throat.”
- On another occasion, this same employee held the victim “over a stairwell, more than 30 feet from the floor.”
- Other male employees also physically grabbed and pinched the victim.
- The court found this conduct stated a claim of hostile environment discrimination under Title VII, because employees touched her in a sexual manner, directed sexual comments toward her, and continued to write sexual graffiti throughout the workplace.

**Physical**

- Hugging or kissing
- Touching (e.g., neck massages, hand on shoulder, hand around waist)
- Blocking normal body movements or making threatening body movements
- “Brushing” by someone
- Not observing personal space

Case Study #2

- A San Diego County jury awarded four women a total of $6.85 million in a sexual harassment lawsuit against a movie theater chain.
- In their 2003 lawsuit against UltraStar Cinemas, the women claimed that they were harassed by two managers at a theater in Poway, outside San Diego.
- According to the lawsuit, the managers put a retractable knife blade to the plaintiffs’ throats, placed them in police-style restraint holds, and inappropriately touched and leered at them.
- The four plaintiffs were 16 and 17 years old at the time the alleged harassment began in December 2001; the managers were 32 and 33 years old.
- During the 7-week trial, attorneys for the four women presented evidence that UltraStar’s owners and operators knew about the managers’ conduct, but turned a blind eye to it.

**Visual**

- Pictures, calendars, magazines, catalogues, etc.
- Screen savers
- Suggestive gestures
- Inappropriate emails, calendars, cartoons, or other images
- Leering or other suggestive facial expressions
- Staring at body parts
- Winking
Case Study #3

In *Robinson v. Jacksonville Shipyards, Inc.*, a shipyard company employed a female welder who was continually subjected to nude and partially-nude pictures posted by her male coworkers. The men referred to the victim as “baby,” “sugar,” “momma,” and “dear.” In addition, the men wrote obscene graffiti directed at the victim all over the plant. The men also made numerous suggestive and offensive remarks to the victim concerning her body and the pictures posted on the walls. The victim complained about this atmosphere of harassment on a number of occasions, but the company’s supervisory personnel provided little or no assistance. The court found this conduct violated Title VII because:

- the plaintiff belonged to a protected category
- the plaintiff was subjected to unwelcome sexual harassment
- the harassment was based on sex
- it affected a term or condition of her employment
- the employer knew or should have known about the harassment and failed to take remedial action

Adverse Consequences of Harassment

- Leaving the job
- Depression, anxiety, loss of self-esteem
- Headaches, nausea, weight loss/gain, insomnia, high blood pressure, gastrointestinal disorders
- Stress in relationships with coworkers, friends, and family
- Psychosocial disorders
- Disintegrating personal self-esteem (self-worth and self-confidence) and relational problems
- Although men face harassment, women are the most likely victims
- Harm caused by sexual harassment is often extreme, including:
  - humiliation
  - loss of dignity
  - psychological (or physical) injury
  - damage to professional image or career
- Inevitably, the victims face a choice between their work and self-esteem
- Sometimes, they face a choice between their jobs and their own safety

Prevention

- Sexual harassment is often dismissed by those not subjected to it as “just a bit of fun” or “a bit of harmless flirting.”
- In reality, sexual harassment is not only annoying but also unlawful.
- As human resource managers, executive officers have a duty to help keep the workplace free of sexual harassment.
- To better perform this function we need to equip ourselves with knowledge of sexual harassment and its legal implications.
How to Avoid Sexual Harassment Lawsuits #1
- If your company does not have a sexual harassment/discrimination policy, get one immediately
- The policy should communicate that the company is taking a “zero tolerance” approach toward sexual harassment
- Have an attorney review it, and make sure it gets out to all your employees either through the employee handbook or in memo form
- Have the employees sign it to acknowledge that they received and read the policy
- The policy should be verbally communicated to all new employees, and can even be posted in the workplace
- If you have employees whose primary language is not English, have your sexual harassment policy translated or communicated to them in their primary language

How to Avoid Sexual Harassment Lawsuits #2
- Provide different routes that employees can take to file complaints
  - calling a hotline
  - contacting the human resources department
  - contacting their supervisor
- Also, the employee should have the option of talking with a male or female company representative

How to Avoid Sexual Harassment Lawsuits #3
- Conduct sexual harassment training, even if it is only composed of reading material or watching a video – something is better than no training at all

How to Avoid Sexual Harassment Lawsuits #4
- Conduct yearly meetings with your supervisors to review the sexual harassment policy
- Make sure it is understood that an employee does not need to suffer negative consequences in order to make a claim of sexual harassment
- Inform the supervisors that even mild to moderate sexual jokes or statements can create an atmosphere of hostility that will make some employees uncomfortable, and could lead to the creation of an environment where sexual discrimination could develop
- The supervisors should also be directed to always inform upper management of any sexual harassment complaints he or she receives from employees
- Supervisors should never promise confidentiality with an employee when the information relates to sexual harassment
How to Avoid Sexual Harassment Lawsuits #5
- Conduct a yearly sexual harassment survey among your employees
- The survey can be done anonymously and should be distributed with a copy of the company’s sexual harassment policy
- The survey can simply ask the employees (male and female) if they have experienced any form of sexual harassment during the past year
- Why do a survey? – the results of the survey will tell a court that your company is actively engaged in preventing and correcting sexual harassment
- Remember that the Supreme Court has just determined that an employer can be held liable for incidents of sexual harassment that they are unaware of occurring
- One method of defense will be to demonstrate to the court or jury that your company conducts yearly meetings with supervisors, and also conducts a yearly sexual harassment survey to attempt to uncover sexual harassment violations before they cause problems for your employees

How to Avoid Sexual Harassment Lawsuits #6
- Conduct investigations promptly and thoroughly
- After the dispute is resolved, a follow-up should be done with the employee to ensure that no one has suffered retaliation
- Make sure your sexual harassment policy spells out clearly that retaliation against an employee filing a sexual harassment complaint is illegal and will not be tolerated

How to Avoid Sexual Harassment Lawsuits #7
- Treat same-sex harassment, and men reporting harassment, the same as you would for a woman reporting her male supervisor being sexually inappropriate

How to Avoid Sexual Harassment Lawsuits #8
- Always document the results of any sexual harassment complaint or investigation
- Not only document the results, but any corrective action that you asked the employee or supervisor to take
- Follow up on any corrective action so you can document if the employee fails to take advantage of your company’s policies/procedures, or any corrective action that your company takes to prevent the sexual harassment from occurring again in the future

How to Avoid Sexual Harassment Lawsuits #9
- Inform all employees that it is their obligation to report sexual harassment that they either experience or witness
Policy Education for Employees

- An EEO statement
- A policy describing the types of behavior that are forbidden in the workplace, along with the potential penalties for violations
- An “open door” policy to encourage employees to make sexual harassment complaints without fear of retaliation
- Employees should have the option to register their complaints to more than one person
- The policy also should outline how a subsequent investigation will unfold
  - this helps employees understand the process and managers to be consistent in its application
- A method to ensure that every employee receives a copy of these policies
  - confirmation of those notifications should be kept in employee personnel files
- Procedures or software to monitor telephone, computer, and internet usage
  - to avoid invasion of privacy claims, employees should be required to sign a statement acknowledging the company’s right to monitor their use of computers and the internet
- Periodic sexual harassment awareness training for all employees
  - this does not need to be expensive or time consuming, but should be held on a regular basis so that employees fully understand what behavior is not acceptable

Common Effects of Sexual Harassment

- High level of anxiety and stress
- Low tolerance for frustration
- Anger
- Depression
- Nervousness
- Emotional instability
- Discontentment
- Fear
- An inability to concentrate
- Anxiety
- Deep sense of guilt
- Loss of confidence
- Feelings of humiliation
- A sense of helplessness and vulnerability

The Aftermath of Speaking Up

- Speaking up can be worse than the harassment
  - Helen Watson, a sociologist, interviewed women who had been sexually harassed about their experiences, and came up with this conclusion:
  - To make a formal accusation is an act of desperation – to take on the establishment in ignorance of the consequences, the act of a weak individual against a stronger opposition which tends to cluster around the accused
  - The outcome is to be labeled a troublemaker, to risk hostility or isolation from colleagues, to force others to take sides, and in general to make the situation worse
  - One woman added, “Facing up to the crime and having to deal with it in public is probably worse than suffering in silence. I found it to be a lot worse than the harassment itself.”
  - Even those women who had initiated a public case, which resulted in the harasser being disciplined, stress that they would not take the same course of action again in a similar situation
  - There is full agreement with the perception that making an accusation is worse than having to tolerate the harassment on both a personal and a professional level
What to Avoid With an Employee Raising a Harassment Complaint

- Do not wait to have the conversation – make time immediately
- Do not promise the employee that the complaint will be kept confidential
  - this is not possible because an investigation will have to be conducted
  - you can explain that the information will be shared only on a “need to know” basis, but you cannot promise absolute confidentiality
- Do not interrupt the employee while he or she is speaking
  - let them engage in a narrative so that you are learning the information from the employee’s perspective
- Do not wait to write down what the employee says
  - write it down while the employee is speaking, but if that is not possible, do not wait longer than 1 or 2 hours to commit the conversation to writing
- Do not editorialize or characterize what the employee said
  - write down the words that the employee and you used
- Do not ask questions that imply you are judging the employee

What to Avoid With an Employee Raising a Harassment Complaint

- Do not try to offer explanations for the conduct the employee is complaining about
  - it may feel natural to do that, particularly if the employee is upset and you are trying to calm him or her down, or if you know the person the employee is complaining about and think that the employee simply misunderstood the conduct
  - if you try to explain the conduct or defend the alleged wrongdoer, even in a logical way, you can be perceived as being dismissive of the complaint or worse, you could be accused of calling the employee a liar
  - your explanations could be characterized as minimizing the seriousness of the complaint, and that could impact the employee’s willingness to cooperate in an investigation, or if litigation is filed later, the jury may think that your explanations show that you and the company did not care
- Do not forget to give the employee a copy of the company’s harassment policy and explain how the complaint process works
- Do not forget to invite the employee to contact you or human resources if he or she thinks they are being subjected to retaliation during or after the investigation
- Do not promise the employee a particular result
  - let the employee know that the company needs to investigate and until it is finished, it is not possible to know what will happen
What to Avoid With an Employee Raising a Harassment Complaint

- If the employee asks for or demands a transfer while the investigation is pending, do not promise to transfer him or her
  - it may or may not be necessary
  - also, it may or may not be perceived as retaliation
  - talk to human resources before taking any step like that
- Do not give advice to the employee
- Other than human resources, do not talk to anyone else about the allegations
  - do not tell the person who is being accused
    - if you do, you could undermine an effective investigation, and doing so will be used against you if litigation is filed later
- Do not ignore others’ conduct in the workplace during or after the investigation
  - if they are treating the employee differently, either with regard to his or her work or on a personal level, your failure to address the conduct could be viewed as retaliation by the company
  - check with human resources before taking action, but do not ignore it

The Cost of Sexual Harassment

- Failure to adopt a proactive and aggressive stance on this issue can result not only in costly lawsuits, but also in a loss of employee morale, decline in productivity, and an erosion of a company’s public image
- A typical Fortune 500 corporation can expect to lose $6.7 million annually
- Losses can result from absenteeism, lower productivity, increased healthcare costs, poor morale, and employee turnover
- These losses do not include litigation costs or court-awarded damages
- Bad press, which often accompanies such cases, can cost a business not only its reputation but also its customers and revenues

Negative Messages and Myths

- A woman who speaks up is subjected to an onslaught of distortions about sexual harassment which serve the harasser
- It is hard not to internalize these, even when you think you are being really sure of yourself
- Here is a partial list of prevalent attitudes a woman must trudge through:
  - sexual harassment policy is an attempt to “legislate sexuality;” to interfere with people’s private lives
  - sexual harassment is not serious; it does not really interfere with the professional relationship or environment
  - sexual harassment policy is a witch hunt; you cannot smile at anyone anymore without getting accused of sexual harassment
Negative Messages and Myths

1. Two kinds of victim blaming:
   1) The sexual harassment was partly or wholly her fault (she used poor judgment, or was too friendly to him, is attractive, dresses attractively, etc.)
   2) The consequences which befall him are her fault – after all, if she had kept her mouth shut, nothing would have happened; she is to blame for all of the fallout

2. Her motives for complaining must be evaluated in order to evaluate the case; she is on trial, even if there is no actual investigation

3. If her initial romantic sexual involvement with the harasser had been consensual, and harassment began when she no longer wished such involvement, observers tend to see the subsequent harassment as consensual as well

4. She is a troublemaker; she is out to get men

5. Women who do not speak up about sexual harassment are not offended by it

6. The totality of the negative effects of her speaking up are considered her doing and she must have wanted them (or else she is uncaring)

7. Speaking up is selfish and coldhearted of her

8. Her speaking up shows she is a dangerous and unpredictable person; she may sue at any moment, so she must be treated with fear by just about anyone

The Do's and Don'ts of Sexual Harassment

Do...

- Admit that a problem exists
- Tell the offender specifically what you find offensive
- Tell the offender that his or her behavior is bothering you
- Say specifically what you want or do not want to happen
  - e.g., “Please call me by my name, not ‘honey,’” or “Please do not tell that kind of joke in front of me”

Do NOT...

- Blame yourself for someone else’s behavior
- Choose to ignore the behavior
- Try to handle any severe or recurring harassment problem by yourself

Legal Issues

- If you have a legal issue or wish to obtain legal advice, you should consult an attorney in your area concerning your particular situation and facts

Resources

- The federal EEOC investigates complaints of unlawful harassment in employment
- The U.S. Department of Education OCR investigates complaints of unlawful harassment of students in educational programs or activities
- For more information, contact the nearest office of the EEOC or OCR listed in the telephone directory
Sexual Harassment

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