

What You Can Do

When you are deciding what to do, remember that every situation is different. There is no one best thing to do. However, you should always report the sexual harassment to your employer. You then have the option to use your company's sexual harassment complaint process, file a charge with a state or federal agency, and/or go to court.

It is important to talk with a lawyer or legal services organization like Equal Rights Advocates to discuss your choices (see "Resources"). They can help you to understand your choices, their benefits and risks, as well as the strengths and weaknesses of your case.

- **SAY "NO" CLEARLY.** Tell the person that his/her behavior offends you. Firmly refuse all invitations. If the harassment doesn't end promptly, write a letter asking the harasser to stop. Keep a copy of this letter.
- **WRITE DOWN WHAT HAPPENED.** As soon as you experience the sexual harassment, start writing it down. Write down dates, places, times, and possible witnesses to what happened. If possible, ask your co-workers to write down what they saw or heard, especially if the same thing is happening to them. Remember that others may (and probably will) read this written record at some point. It is a good idea to keep the record at home or in some other safe place. Do not keep the record at work.
- **REPORT THE HARASSMENT.** Tell your supervisor, your human resources department or some other department or person within your organization who has the power to stop the harassment. If possible, tell them in writing. Keep a copy of any written complaint you

make to your employer. It is very important that you report the harassment because your employer must know or have reason to know about the harassment in order to be legally responsible for a co-worker, client or customer's actions. Even if your harasser was your supervisor, you may need to show that you reported the harassment to your employer.

- **START A PAPER TRAIL.** When you report the sexual harassment to your employer, do it in writing. Describe the problem and how you want it fixed. This creates a written record of when you complained and what happened in response to it. Keep copies of everything you send and receive from your employer.
- **REVIEW YOUR PERSONNEL FILE.** Most states allow employees to review some or all of their personnel files. In California, you have the right to inspect your personnel file insofar as it relates to your performance or any grievance in which you are involved.
- **USE THE GRIEVANCE PROCEDURE AT WORK.** Many employers and schools have policies for dealing with sexual harassment complaints. You may be able to resolve the problem through this process. To find out your employer's policies, look in your employee manual/personnel policies and/or speak to a human resources officer. It is important to follow your employer's procedures.
- **INVOLVE YOUR UNION.** If you belong to a union, you may want to file a formal sexual harassment complaint through the union and try to get a shop steward or other union official to help you work through the grievance process. Get a copy of your union's grievance policy and see if it discusses the problems you are experiencing. If you use your union's grievance procedure, you must still file a complaint with a government agency if you want to file a lawsuit in federal or state court.

- **FILE A DISCRIMINATION COMPLAINT WITH A GOVERNMENT AGENCY.** If you want to file a lawsuit in federal or state court, you must first file a formal sexual harassment complaint with the federal Equal Employment Opportunity Commission (EEOC) and/or your state's fair employment agency (if your state has one). In California, the state fair employment agency is the Department of Fair Employment and Housing (DFEH). If you are a federal employee, follow federal guidelines on how to file a sexual harassment complaint. You can obtain these guidelines from the Equal Employment Opportunity Commission at (800) 669-4000.

Do not miss deadlines for filing with the EEOC or other government agency! Do not delay in filing a complaint with your employer! If you start to feel that your employer's process for dealing with the sexual harassment may not help you, don't wait to file a formal complaint. This is very important! You cannot bring a lawsuit against your employer unless you have first filed a formal sexual harassment complaint with the EEOC or your state fair employment agency.

In California, you have 300 days from an act of sexual harassment to file a complaint with the EEOC and 1 year to file a complaint with the DFEH. The deadlines vary from state to state but you must first file a complaint with the EEOC and your state fair employment agency (if your state has one) before you will be allowed to file a lawsuit in court. Under federal law in other states, you may have only 180 days to file a formal complaint. These deadlines apply even if you have filed an internal complaint with your employer or union. Be sure to check with a community legal organization or an attorney to find out about specific filing requirements and deadlines.

- **FILE A LAWSUIT.** After you file a formal complaint with the EEOC and/or your state's fair employment agency, you can also consider filing a lawsuit. You can sue for money damages, to get your job back, and you can also ask the court to make your employer change its practices to prevent future sexual harassment from occurring.

Equal Rights Advocates Can Help:

ERA provides a toll-free multi-lingual Advice and Counseling Hotline (1-800-839-4372), where you can receive advice and information on your legal rights. All calls are confidential.

Resources:

NATIONAL

U.S. Equal Employment Opportunity Commission (EEOC)

(The federal agency that enforces workplace sexual harassment laws)

(800) 669-4000: Toll-free phone number that automatically connects you to your local EEOC office.

www.eeoc.gov

For state and local offices, check the U.S. government pages of the telephone book.

U.S. Department of Education Office of Civil Rights (OCR)

(The federal agency that enforces school anti-discrimination laws)

(800) 421-3481

www.ed.gov/offices/OCR

For state and local offices, check the U.S. government pages of the telephone book.

CALIFORNIA

California Department of Fair Employment and Housing (DFEH)

(The state agency that enforces the state workplace anti-discrimination laws.)

(800) 884-1684: Within California

(916) 227-0551: Outside California

www.dfeh.ca.gov

For all other states, check the state government pages of the telephone book for your local agencies.

EQUAL RIGHTS ADVOCATES

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Equal Rights Advocates' mission is to protect and secure equal rights and economic opportunities for women and girls through litigation and advocacy.

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DESIGN BY ZESTOP DESIGN

sexual harassment

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KNOW YOUR RIGHTS SERIES
Sexual Harassment
Sexual Harassment in Schools
Sex Discrimination
Family and Medical Leave
& Pregnancy Discrimination

What is Sexual Harassment?

Sexual harassment is a form of sex discrimination. The legal definition of sexual harassment is “unwelcome verbal, visual, or physical conduct of a sexual nature that is severe or pervasive and affects working conditions or creates a hostile work environment.”

Unwelcome

Sexual harassment must be unwelcome. For this reason, it is important to communicate (either verbally, in writing, or by your actions) to the harasser that the conduct makes you uncomfortable and that you want it to stop.

Conduct

■ OF A SEXUAL NATURE

Many different kinds of verbal, physical, nonverbal or visual conduct may be sexual harassment if it is of a sexual nature. The behavior must also be unwelcome and severe or pervasive. Here are some more examples:

➤ Verbal or written

Comments about clothing, personal behavior, or a person’s body; sexual or sex-based jokes; requesting sexual favors or repeatedly asking a person out; sexual innuendoes; telling rumors about a person’s personal or sexual life; threatening a person

➤ **Physical:** Assault; impeding or blocking movement; inappropriate touching of a person or a person’s clothing; kissing, hugging, patting, stroking

➤ **Nonverbal:** Looking up and down a person’s body; derogatory gestures or facial expressions of a sexual nature; following a person

➤ **Visual:** Posters, drawings, pictures, screensavers or emails of a sexual nature

■ OF A NON-SEXUAL NATURE

Sexual harassment does not have to be sexually suggestive. It can be based on your gender alone. For example, it may be sexual harassment if you are a woman working as a carpenter on an all-male job and you are the only one who is singled out for harsh criticism and verbal abuse even though your job performance is the same as your male co-workers.

➤ Severe or Pervasive

The conduct of the harasser must either be severe or pervasive to be sexual harassment. A single incident is probably not sexual harassment unless it is severe. For example, a single incident of rape or attempted rape would probably be sexual harassment (it would also violate criminal laws).

Although a single unwanted request for a date or one sexually suggestive comment might offend you and/or be inap-

propriate, it may not be sexual harassment. However, a number of relatively minor separate incidents may add up to sexual harassment if the incidents affect your work environment. Some questions you can ask yourself to determine whether the conduct is pervasive are: How many times did the incidents occur? How long has the conduct been going on? How many other people have also been treated this way?

➤ Affects Working Conditions or Creates a Hostile Work Environment

If you are fired, refused a promotion, demoted, given a poor performance evaluation, or reassigned to a less desirable position because you reject a sexual advance, this is likely sexual harassment. Even if the conduct does not result in economic injury or a change in the status of your job, it may be sexual harassment if the conduct unreasonably interferes with your work performance or creates an “intimidating, hostile, or offensive work environment.” For example, it may be illegal sexual harassment if repeated sexual comments make you so uncomfortable at work that your performance suffers or if you decline professional opportunities because it will put you in contact with the harasser.

➤ Retaliation

Not only is sex harassment against the law, but so is retaliating (taking revenge) against someone for complaining about sexual harassment or for participating in an investigation of sexual harassment. Examples of retaliation include: you complain about sexual harassment and are made to take an unpaid leave of absence although the harasser continues to work; after you write a letter describing sexual harassment that you witnessed, you are reassigned to a less desirable position. If your employer retaliates against you for complaining about sexual harassment or for participating as a witness in an investigation of sexual harassment, you may take any or all of the steps suggested below (see “What You Can Do” section).

Sexual Harassment is Against the Law

Laws against sexual harassment are designed to protect you from your boss, your co-worker, or customers at work. Both men and women can be sexually harassed. Someone of the same or opposite sex can sexually harass you.

FEDERAL LAW

The federal law prohibiting sexual harassment in the workplace is Title VII of the 1964 Civil Rights Act. The law makes certain employers responsible for preventing and stopping sexual harassment that occurs on the job.

Title VII applies to private and most public employers, labor organizations, employment agencies, and joint employer-union apprenticeship programs with 15 or more employees.

CALIFORNIA STATE LAW

The California Fair Employment and Housing Act (FEHA) prohibits sexual harassment in employment. FEHA applies to private and public employers, employment agencies, labor organizations, state licensing boards, and state and local governments that have 1 or more employees. Unlike Title VII, FEHA provides protection against sexual harassment for contract employees.

OTHER STATE LAWS

Like California, most states have a law that makes sexual harassment – and other forms of sex discrimination – illegal. Equal Rights Advocates’ Advice and Counseling Line can refer you to a local attorney (see “Resources” section).

Employer Responsibilities to Employees

Title VII makes the above-mentioned employers liable to prevent and stop sexual harassment of employees. Under Title VII, these employers must: (1) take reasonable care to prevent sexual harassment; (2) take reasonable care to promptly correct sexual harassment that has occurred.

There are no specific actions an employer must take to satisfy the requirement that it take reasonable care to prevent or stop sexual harassment. An employer may satisfy this requirement by having, and distributing to employees, a policy prohibiting sexual harassment and informing employees how to make a complaint. However, if an employer has a policy but does not enforce it, the employer may not be taking reasonable care. The same may be true if an employ-

er fails to investigate sexual harassment complaints but investigates other complaints of misconduct.

However, before an employer can be legally responsible for taking reasonable care to correct sexual harassment, the employer must be aware that the harassment has occurred. For this reason, it is important to follow your company’s internal grievance procedures, if they exist, or to otherwise notify your supervisor if you are experiencing harassment.

It is sometimes hard to report harassment because you might feel embarrassed or think that it was your fault even though it is not. Reporting sexual harassment to your employer is important. It may stop the behavior and it makes your employer responsible for stopping the behavior.