

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

Conduct is not sexual harassment if it is welcome. For this reason, it is important to communicate (either verbally, in writing, or by 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 conduct — verbal, physical, nonverbal or visual — that is of a sexual nature may be sexual harassment, if the behavior is unwelcome and if it is 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

Non-sexual conduct may also be sexual harassment if you are harassed because you are female, rather than male, or because you are male, rather than female. 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 whose tools are frequently hidden by 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 inappropriate, 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 harassment been going on? How many other people were also sexually harassed?

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, that almost certainly is sexual harassment. Even if the conduct does not result in economic injury or change 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 in the same or different department. 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 in the “What You Can Do” section.

Sexual Harassment is Against the Law

Laws against sexual harassment are designed to protect you from your boss, co-workers, and 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 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 persons who provide services pursuant to a contract.

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 employers liable to prevent and stop sexual harassment of employees. Under Title VII, covered 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 the requirement of reasonable care to prevent sexual harassment 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, or if an employer fails to investigate sexual harassment complaints but investigates

other complaints of misconduct, then the employer may not be taking reasonable care.

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.

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. 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" section). 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 and keep a copy.

■ **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 com-

plaint 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 or give a good reason why you didn't.

■ **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.** It is your right to see your personnel file. If you work for a private employer, in certain states including California, you have the right to request and receive copies of everything in your file that you have signed. You want to file a lawsuit in federal or state court.

■ **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 (in California, this is the Department of Fair Employment and Housing). (See "Resources" section for contact information.) If you are a federal employee, follow federal guidelines on how to lodge a sexual harassment complaint. You can obtain these guidelines from the Federal Labor Relations Authority at (202) 482-6600.

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.

Under federal law in California, you have 300 days from an act of sexual harassment to file a formal complaint. Under federal law in other states, you may have only 180 days to file a formal complaint. It is important to check with the EEOC or a legal organization to find out the time limits. Call Equal Rights Advocates or a lawyer to find out what you need to do and when.

Under California law, you have one year from an act of sexual harassment to file a formal complaint. The deadlines under other states' laws differ. Call Equal Rights Advocates or a lawyer to find out what to do and when.

■ **FILE A LAWSUIT.** After you file a formal complaint with the EEOC 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 federal workplace anti-discrimination laws)

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

(415) 356-5100: San Francisco, CA local office

(510) 637-3230: Oakland, CA local office

www.eeoc.gov

All other states, check the U.S. government pages of the telephone book for your local offices.

U.S. Department of Education Office of Civil Rights (OCR)
(The federal agency that enforces federal school anti-discrimination laws)

(800) 421-3481

(415) 556-4275: San Francisco, CA local office

www.ed.gov/offices/OCR

All other states, check the U.S. government pages of the telephone book for your local offices.

CALIFORNIA

California Department of Fair Employment and Housing (DFEH)

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

(800) 884-1684: Within California

(916) 227-0551: Outside California

www.dfeh.ca.gov

All other states, check the state government pages of the telephone book for your local offices.

Equal Rights Advocates
1663 Mission Street, Suite 250
San Francisco, CA, 94103
Phone: (415) 621-0672
Fax: (415) 621-6744
www.equalrights.org

Advice and Counseling:
(415) 621-0505
1-800-839-4ERA (4372)

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