



EQUAL RIGHTS ADVOCATES **KNOW YOUR RIGHTS** SEXUAL HARRASSMENT AT WORK

What is Workplace Sexual Harassment?

Sexual harassment at work is a form of unlawful sex discrimination. The law defines sexual harassment as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature or based on sex that affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

There are several key phrases in this definition that are important to understanding your rights and any potential legal claims you may have:

“UNWELCOME” - To be illegal, sexual harassment must be unwelcome. Unwelcome means unwanted. For this reason, it is important to communicate (verbally, in writing, or by your actions) to the harasser(s) that the conduct makes you uncomfortable and that you want it to stop.

CONDUCT “OF A SEXUAL NATURE” OR “BASED ON SEX” - Many different kinds of verbal, physical, nonverbal, and visual conduct of a sexual nature may be sexual harassment. **Here are some examples:**

VERBAL OR WRITTEN:

Commenting about a person's clothing, personal behavior, personal (romantic) relationships, or body;

Making sexual or sex-based jokes or innuendoes;

Requesting sexual favors or dates;

Spreading rumors about a person's personal or sexual life; and/or

Threatening a person for rejecting or refusing sexual advances or overtures.

PHYSICAL:

Impeding or blocking someone's movement;

Inappropriate touching of a person's body or clothing;

Kissing, hugging, patting, or stroking; and/or

Assaulting (touching someone against her will or without her consent).

NONVERBAL:

Looking up and down or staring at a person's body;

Making derogatory gestures or facial expressions of a sexual nature; and/or

Following a person around.

VISUAL:

Displaying or sharing posters, drawings, pictures, screensavers, or emails of a sexual nature.

Sexual harassment does not have to be sexually suggestive or based on sexual desire. Harassing conduct can also be unlawful if it is based on your sex or gender. For example, if you are a woman working as a carpenter on an otherwise all-male job site, and you are singled out for severe or pervasive criticism, verbal abuse, or other hostility to which your male co-workers are not subjected, this kind of conduct may be a form of unlawful sexual harassment.

“Affects an individual's employment” or “unreasonably interferes with an individual's work performance” If you are fired, refused a promotion, demoted, given a poor performance evaluation, reassigned to a less desirable position, shift, or location, or there is another concrete negative employment action taken against you because you reject a sexual advance or other conduct based on your sex, then the sexual harassment has likely affected your employment.

“Creates an intimidating, hostile, or offensive work environment” Even if your employer does not take some action that changes the status of your employment or directly results in you losing money (which probably would happen if you lost your job, were demoted, or had your hours cut), you may still have a claim for unlawful sexual harassment if the conduct is so “severe” or “pervasive” that it unreasonably interferes with your work performance or creates an intimidating, hostile, or offensive work environment.

“Severe or Pervasive” To meet the legal definition of “harassment,” the conduct in question must either be severe or pervasive. It does not have to be both. The law generally doesn’t prohibit simple teasing, isolated offhand comments, or incidents that happen only once and are not serious. So, generally speaking, a single unwanted request for a date or one sexually suggestive comment that offends you and/or was inappropriate may not be “severe” or “pervasive.” However, a single incident of very serious conduct, like rape or attempted rape, would probably meet this part of the definition of sexual harassment. (Such conduct may also violate other laws and/or constitute criminal behavior.) Harassment that is less severe but happens frequently or persists over time may be “pervasive,” and therefore also meet this part of the definition. So, a number of relatively minor separate incidents may add up to sexual harassment if the incidents negatively affect your work environment. To determine whether the harassing conduct is “pervasive,” you can ask yourself: How many times did the incidents occur? How long has the conduct been going on? Have other people (of my same sex or gender) also been treated this way? 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.

Keep in mind that to create a “hostile work environment,” the conduct has to not only make you personally feel intimidated or offended at work, but it also has to be the type of behavior that would make a reasonable person of your sex, facing similar circumstances, feel that way.

Sexual Harassment is Against the Law

The laws against sexual harassment are designed to protect you from harassment by your boss, your supervisors, your co-workers, and customers or clients that you have to deal with at work. These laws apply to both men and women, and they prohibit sexual harassment whether it is directed at someone of the same sex or the opposite sex.

Federal Law

The federal law prohibiting sexual harassment in the workplace is Title VII of the 1964 Civil Rights Act, often just called “Title VII.” Title VII applies to most private and 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.

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 Service can refer you to a local attorney. 1-800-839-4ERA (4372) www.equalrights.org/legal-help/

Can my employer retaliate against me for complaining about or opposing sexual harassment?

NO. Not only is sexual harassment against the law, so is retaliating (punishing) someone for complaining about sexual harassment or for supporting or participating in an investigation (or other legal action) related to sexual harassment.

For example, if you complain about sexual harassment and are forced out on leave while the harasser continues to work, or you are reassigned to a less desirable position after you write a letter describing sexual harassment of someone else that you witnessed, these are potentially forms of unlawful retaliation. If your employer retaliates against you for reporting or opposing sexual harassment or for participating in an investigation or legal action related to sexual harassment, you may consider taking any or all of the steps suggested below (see “What You Can Do” section).

Employer Responsibilities to Employees

Employers covered by the federal or state laws prohibiting sexual harassment are required to take reasonable steps to prevent and promptly correct sexual harassment that occurs on the job.

One important factor in determining whether an employer has met the requirement to take “reasonable steps” to prevent and/or stop sexual harassment is whether it has issued and distributed to employees a policy prohibiting sexual harassment and informing employees how to make a complaint. Of course, if an employer has such a policy but doesn’t tell employees about it, doesn’t train managers how to follow it, or just fails to enforce it, then the employer may not be taking reasonable care. The same may be true if an employer has lawful policies and trains employees about them, but then fails to adequately investigate sexual harassment complaints once they are made.

It is important to note that before an employer can be held legally responsible for sexual harassment committed by someone who is not the complaining employee's "supervisor," the employer must be on notice that the harassment has occurred.

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, reporting the sexual harassment to your employer is usually an important first step. 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 options (see "Resources" below). They can help you to understand your choices, their benefits and risks, and the strengths and weaknesses of your case. If you would like free legal advice and counseling, **please contact Equal Rights Advocates' Advice and Counseling Service. 1-800-839-4ERA (4372) www.equalrights.org/legal-help/**

Here are a few tips and options for you to consider if you think you are facing sexual harassment at work:

SAY "NO" CLEARLY	Tell the person that his/her behavior offends you. Firmly refuse all invitations. If the harassment doesn't end promptly, ask the harasser to stop, and put that request in writing. Keep a copy of this written communication.
WRITE DOWN WHAT HAPPENED	As soon as you experience sexual harassment, start writing it down. Write down dates, places, times, and possible witnesses to what happened. If you can, 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	If it is possible for you to do so, 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 you can, it is best to put your complaint in writing.
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 give employees the right to review and/or make copies of their personnel files. In California, you also have the right to obtain a copy from your employer of any document that you signed. Both current and former employees can take advantage of these laws to get access to their own personnel and other employment records.
FIND OUT ABOUT YOUR EMPLOYER'S GRIEVANCE AND COMPLAINT PROCEDURE	Many employers have policies and procedures written down that deal with how to make and respond to sexual harassment complaints. To find out about your employer's policies, look for or ask to see a copy of your employee manual, any written personnel policies, and/or speak to someone in the human resources department, if one exists. You may be able to use these procedures to stop the harassment and resolve the problem. At the very least, following your employer's complaint procedures (if any exist) will show that you did what you could to make the employer aware of the harassment.
INVOLVE YOUR UNION	If you belong to a union, you may want to file a formal grievance 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 collective bargaining agreement to see if it discusses the problems you are experiencing. Keep in mind that if you use your union's grievance

	procedure, you must still file a complaint (or “charge”) of discrimination with a government agency before filing 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 (or “charge”) with the federal Equal Employment Opportunity Commission (EEOC) at www.eeoc.gov or 1-800-669-4000 and/or your state’s fair employment practices agency (if your state has one). In California, you can reach the state fair employment practices agency is the Department of Fair Employment and Housing (DFEH), at www.dfeh.ca.gov or toll-free at 1-800-884-1684. If you work for the federal government, you can get information about how to file a sexual harassment complaint from the EEOC by contacting them at 1-800-669-4000 and identifying yourself as a federal employee.
BE AWARE OF DEADLINES!	Do not delay in reporting the problem to your employer, if it is possible to do so. If you start to feel that your employer’s process for dealing with the sexual harassment may not help you, be aware that doing nothing could mean losing your rights! This is very important! There are legal deadlines for filing a formal complaint or charge of discrimination with government agencies, and you cannot bring a lawsuit against your employer unless you have first filed a complaint with the EEOC or the agency that enforces your state’s employment discrimination laws.

Under federal law, you have **180** days from the last act of sexual harassment or discrimination to file a charge with the EEOC, *unless* you live in a state (like California) that has its own fair employment practices agency, in which case you have **300** days to file your charge.

File A Lawsuit. After you file a formal complaint with the EEOC and/or your state’s fair employment practices agency, you may also consider filing a lawsuit. The remedies or relief you can seek in a lawsuit will vary, but may include money damages, getting your job back (if you’ve been fired or transferred to another position), and/or making your employer change its practices to prevent future sexual harassment from occurring. If you are thinking about filing a lawsuit, you should contact a lawyer to assist you. For more information or referrals, **please contact Equal Rights Advocates’** Advice & Counseling service at the toll-free number listed below.

Resources

Equal Rights Advocates Can Help: ERA provides free legal information, advice, and referrals through our toll-free Advice and Counseling service, at 1-800-839-4ERA (4372). All calls are confidential. You can find more information about legal rights at work and in school on our website, at www.equalrights.org/legal-help.

Address: 1170 Market St, Suite 700, San Francisco, CA 94102

Phone: 415-621-0672

Other Resources:

U.S. Equal Employment Opportunity Commission (EEOC) is the federal agency that enforces Title VII and other workplace anti-discrimination laws 1-800-669-4000: Toll-free phone number that automatically connects you to your local EEOC office. www.eeoc.gov

California Department of Fair Employment and Housing (DFEH) is the state agency that enforces California’s workplace antidiscrimination laws. Within California, you can call DFEH’s toll-free number (800) 884-1684. From outside California, call (916) 227-0551 or go online to the website, www.dfeh.ca.gov. For all other states, check your state government website to find the contact information for your local fair employment practice agency. A list of these agencies can also be found here: <https://www.thelaw.com/law/list-of-state-fair-employment-practices-agencies.330/>.

Equal Rights Advocates is a nonprofit legal organization dedicated to protecting and expanding economic and educational access and opportunities for women and girls until equality is secured for all.