



WOMEN'S LEGAL DEFENSE FUND

October 12, 1991

SEXUAL HARASSMENT IN THE WORKPLACE

WHAT IS SEXUAL HARASSMENT?

Sexual harassment is unwelcome sexual conduct in the workplace, including pressure for dates or sexual favors, explicit sexual remarks, derogatory or suggestive gestures, leering or ogling, touching, or even actual or attempted assault or rape.

Such unwelcome sexual conduct constitutes sexual harassment when 1) submission to such conduct is made implicitly or explicitly a term or condition of an individual's employment; or 2) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating or hostile or threatening work environment.

HOW PREVALENT IS SEXUAL HARASSMENT?

Surveys by the U.S. Merit Systems Protection Board in 1981 and in 1988 of sexual harassment in the federal government found that 42% of the women and 14-15% of the men questioned had experienced some form of harassment.

A 1990 study of sexual harassment in the military revealed that nearly two out of every three (64%) women surveyed said that they had been sexually harassed. Seventeen percent of men surveyed reported that they had been harassed by male or female colleagues.

HOW OFTEN DO VICTIMS OF SEXUAL HARASSMENT REPORT THE BEHAVIOR?

Sexual harassment is significantly underreported. For instance, only five percent of the government employees who indicated in the 1988 U.S. Merit Systems Protection Board survey that they had been harassed actually filed formal complaints or requested investigations.

A 1988 survey by Working Woman magazine found that fear of retaliation was cited as the chief reason for not reporting incidents of harassment. Employees generally lacked confidence in the complaint structure and would often delay reporting harassment -- only then to be asked why they did not come forward sooner. In many cases, women found it easier to quit than to complain.

WHAT IS THE COST OF SEXUAL HARASSMENT?

The studies of federal government workers by the U.S. Merit Systems Protection Board estimated that sexual harassment cost the government \$267 million in two years in lost productivity and turnover.

The 1988 Working Woman study found that sexual harassment costs the typical Fortune 500 company \$6.7 million a year in increased absenteeism, employee turnover, low morale and low productivity.

WHAT ARE THE LEGAL STANDARDS FOR SEXUAL HARASSMENT CLAIMS?

In Meritor Savings Bank v. Vinson, the Supreme Court held that Title VII prohibits unwelcome sexual conduct that creates a hostile or threatening work environment. The Court rejected the contention that Title VII prohibits only discrimination that causes tangible economic harm, ruling instead that Title VII "affords employees the right to work in an environment free from discriminatory intimidation, ridicule, and insult."

In Meritor, Justice Rehnquist made clear that the key inquiry is whether the sexual behavior was unwelcome -- and not whether the victim voluntarily engaged or continued to engage in a relationship with the harasser. Other courts have defined such "unwelcome conduct" as conduct not solicited or incited by the employee that the employee considers undesirable. Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982). Lower courts have also found that employees need not verbally reject the sexual advances of a supervisor; evidence that the employee consistently demonstrated her unalterable resistance to such advances is enough to establish that they are unwelcome. Chamberlain v. 101 Realty, 915 F.2d 777 (1st Cir. 1990).

The law is clear that verbal harassment alone is sufficient to state a claim of illegal harassment -- physical touching is not a necessary element of a sexual harassment claim. Waltman v. International Paper Co., 875 F.2d 468 (5th Cir. 1989); Bundy v. Jackson, 641 F.2d 934 (D.C. Cir. 1981).

The EEOC and most courts attempt to determine what the hypothetical reasonable person's reaction to the defendant's behavior would have been in assessing a hostile work environment claim. If the conduct complained of would have adversely affected the reasonable person's work performance, a Title VII violation may exist. Courts have recently held that when the alleged victim of harassment is a woman, the court must interpret the behavior from the perspective of a reasonable woman in that situation. E.g., Ellison v. Brady, 59 USLW 2455 (9th Cir. 1991).



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We all have a friend or a colleague who has been sexually harassed by her supervisor or co-worker. Maybe it has happened to you -- or a close family member. Sexual harassment is so common that most women accept it as part of a day's work. However, it is a form of sex discrimination. And it is illegal.

WHAT IS SEXUAL HARASSMENT?

Sexual harassment is unwelcome sexual conduct in the workplace. It may be pressure for dates or sexual favors, explicit sexual remarks, or derogatory or suggestive gestures. Or it may be leering, touching, or even actual or attempted assault or rape.

Unwelcome sexual conduct is legally considered sexual harassment when you lose your job or a promotion because you didn't submit to the harassment. Also, if the harassment makes the workplace hostile, offensive, or intimidating, that is illegal.

WHAT SHOULD YOU DO IF YOU ARE SEXUALLY HARASSED?

If you believe you are being sexually harassed, take these steps:

- Clearly communicate to the harasser that the attention is unwanted.
- Keep a written record of what happened, including when it happened, how you responded, whether there were witnesses, and whom you told.
- Talk to other employees if you suspect that they too have been harassed.
- Report the harassment to your supervisor and ask that it be stopped. If your supervisor is the harasser, report it to your supervisor's boss.
- If your employer has an internal complaint system or if you are represented by a union, file a formal complaint. Otherwise, talk to the personnel department.

If you have taken these steps and the harassment has not stopped, you may want to file a charge under Title VII, a lawsuit, or both. The first step is to file a charge with the Equal Employment Opportunity Commission or your local human rights office. Most charges must be filed within 180 days of the alleged discrimination. If you wait too long, you could lose your right to file a charge.

Your local Equal Employment Opportunity Commission (EEOC) or human rights office can help you explore your options. You may also call the national EEOC office toll free at 1-800-USA-EEOC. Consult a lawyer if you are considering going to court.

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