



QUESTIONS AND ANSWERS ABOUT SEXUAL HARASSMENT

IDENTIFYING SEXUAL HARASSMENT

WHAT IS SEXUAL HARASSMENT?

Sexual harassment is a form of sex discrimination which is a violation of Title VII of the Civil Rights Act of 1964. The EEOC's guidelines define two types of sexual harassment: "quid pro quo" and "hostile environment."

WHAT IS "QUID PRO QUO" SEXUAL HARASSMENT?

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute "quid pro quo" sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.

WHAT IS "HOSTILE ENVIRONMENT" SEXUAL HARASSMENT?

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute "hostile environment" sexual harassment when 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.

WHAT FACTORS DETERMINE WHETHER AN ENVIRONMENT IS "HOSTILE?"

The central inquiry is whether the conduct "unreasonably interfered with an individual's work performance" or created "an intimidating, hostile, or offensive working environment." The EEOC will look at the following factors to determine whether an environment is hostile: (1) whether the conduct was verbal or physical or both; (2) how frequently it was repeated; (3) whether the conduct was hostile or patently offensive; (4) whether the alleged harasser was a co-worker or supervisor; (5) whether others joined in perpetrating the harassment; and (6) whether the harassment was directed at more than one individual. No one factor controls. An assessment is made based upon the totality of the circumstances.

WHAT IS UNWELCOME SEXUAL CONDUCT?

Sexual conduct becomes unlawful only when it is unwelcome. The challenged conduct must be unwelcome in the sense that the employee did not solicit or incite it, and in the sense that the employee regarded the conduct as undesirable or offensive.

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HOW WILL THE EEOC DETERMINE WHETHER CONDUCT IS UNWELCOME?
When confronted with conflicting evidence as to whether conduct was welcome, the EEOC will look at the record as a whole and at the totality of the circumstances, evaluating each situation on a case-by-case basis. The investigation should determine whether the victim's conduct was consistent, or inconsistent, with his/her assertion that the sexual conduct was unwelcome.

WHO CAN BE A VICTIM OF SEXUAL HARASSMENT?

The victim may be a woman or a man. The victim does not have to be of the opposite sex. The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.

WHO CAN BE A SEXUAL HARASSER?

The harasser may be a woman or a man. He or she can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.

CAN ONE INCIDENT CONSTITUTE SEXUAL HARASSMENT?

It depends. In "quid pro quo" cases, a single sexual advance may constitute harassment if it is linked to the granting or denial of employment or employment benefits. In contrast, unless the conduct is quite severe, a single incident or isolated incidents of offensive sexual conduct or remarks generally do not create a "hostile environment." A hostile environment claim usually requires a showing of a pattern of offensive conduct. However, a single, unusually severe incident of harassment may be sufficient to constitute a Title VII violation; the more severe the harassment, the less need to show a repetitive series of incidents. This is particularly true when the harassment is physical. For example, the EEOC will presume that the unwelcome, intentional touching of a charging party's intimate body areas is sufficiently offensive to alter the condition of his/her working environment and constitute a violation of Title VII.

CAN VERBAL REMARKS CONSTITUTE SEXUAL HARASSMENT?

Yes. The EEOC will evaluate the totality of the circumstances to ascertain the nature, frequency, context, and intended target of the remarks. Relevant factors may include: (1) whether the remarks were hostile and derogatory; (2) whether the alleged harasser singled out the charging party; (3) whether the charging party participated in the exchange; and (4) the relationship between the charging party and the alleged harasser.

WHAT SHOULD A SEXUAL HARASSMENT VICTIM DO?

The victim should directly inform the harasser that the conduct is unwelcome and must stop. It is important for the victim to communicate that the conduct is unwelcome, particularly when the alleged harasser may have some reason to believe that the advance may be welcomed. However, a victim of harassment need not always confront his/her harasser directly, so long as his/her conduct demonstrates that the harasser's behavior is unwelcome. The victim should also use any employer complaint mechanism or grievance system available. If these methods are ineffective, the victim should contact the EEOC as soon as possible (see Filing a Charge, below).

PREVENTING SEXUAL HARASSMENT

WHAT SPECIFIC STEPS CAN AN EMPLOYER TAKE TO PREVENT SEXUAL HARASSMENT?

Prevention is the best tool to eliminate sexual harassment in the workplace. Employers are encouraged to take all steps necessary to prevent sexual harassment from occurring. An effective preventive program should include an explicit policy against sexual harassment that is clearly and regularly communicated to employees and effectively implemented. The employer should affirmatively raise the subject with all supervisory and non-supervisory employees, express strong disapproval, and explain the sanctions for harassment.

SHOULD AN EMPLOYER HAVE A GRIEVANCE PROCEDURE?

The employer should have a procedure for resolving sexual harassment complaints. The procedure should be designed to encourage victims of harassment to come forward and should not require a victim to complain first to the offending supervisor. They can do so by establishing an effective complaint or grievance process and taking immediate and appropriate action when an employee complains. It should ensure confidentiality as much as possible and provide effective remedies, including protection of victims and witnesses against retaliation.

WHAT IF AN EMPLOYER ASSERTS THAT IT HAS ELIMINATED THE HARASSMENT?

When an employer asserts it has taken remedial action, the EEOC will investigate to determine whether the action was prompt, appropriate and effective. If the EEOC determines that the harassment has been eliminated, the victims made whole, and preventive measures instituted, the Commission normally will administratively close the charge because of the employers' prompt remedial action.

FILING A CHARGE

HOW DO I FILE A CHARGE OF DISCRIMINATION?

Charges of sex discrimination may be filed at any field office of the U.S. Equal Employment Opportunity Commission. Field Offices are located in 50 cities throughout the United States and are listed in most local telephone directories under U.S. Government. To reach the nearest EEOC field office, dial toll free on 800-669-4000. More information on sexual harassment and information on all EEOC-enforced laws may be obtained by calling toll free on 800-669-EEOC. EEOC's toll free TDD number is 800-800-3302.

WHAT ARE THE TIME LIMITS FOR FILING A CHARGE OF DISCRIMINATION?

A charge of discrimination on the basis of sex must be filed with EEOC within 180 days of the alleged discriminatory act, or within 300 days, if there is a state or local fair employment practices agency that enforces a law prohibiting the same alleged discriminatory practice. However, to protect legal rights, it is recommended that EEOC be contacted promptly when discrimination is believed to have occurred.

WHAT TYPES OF EVIDENCE WILL THE EEOC LOOK AT TO DETERMINE WHETHER SEXUAL HARASSMENT HAS OCCURRED?

When investigating allegations of sexual harassment, EEOC will look at the whole record: the circumstances, such as the nature of the sexual advances, and the context in which the alleged incidents occurred. The EEOC recognizes that sexual conduct may be private and unacknowledged, with no eyewitnesses. Corroborative evidence of any nature will be explored.

EEOC also will investigate whether any complaints or protests occurred. However, while a complaint or protest is helpful to a charging party's case, it is not a necessary element of the claim. Victims may fear repercussions from complaining about the harassment and such fear may explain a delay in opposing the conduct. If the victim failed to complain or delayed in complaining, the investigation must ascertain why.

IF I FILE A DISCRIMINATION CHARGE, WHAT TYPES OF RELIEF ARE AVAILABLE?

If you have been discriminated against on the basis of sex, you are entitled to a remedy that will place you in the position you would have been in if the discrimination had never occurred. You may also be entitled to hiring, promotion, reinstatement, back pay and other remuneration. You may also be entitled to damages to compensate you for future pecuniary losses, mental anguish and inconvenience. Punitive damages may be available, as well, if an employer acted with malice or reckless indifference. You may also be entitled to attorney's fees.

CAN MY EMPLOYER RETALIATE AGAINST ME FOR FILING A CHARGE WITH EEOC?

It is unlawful for an employer or other covered entity to retaliate against someone who files a charge of discrimination, participates in an investigation, or opposes discriminatory practices. Individuals who believe that they have been retaliated against should contact EEOC immediately. Even if an individual has already filed a charge of discrimination, he or she can file a new charge based on retaliation.

WHAT LAWS DOES EEOC ENFORCE?

EEOC enforces Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex or national origin; the Age Discrimination in Employment Act; the Equal Pay Act; prohibitions against discrimination affecting individuals with disabilities in the federal government; sections of the Civil Rights Act of 1991; and Title I of the Americans with Disabilities Act, which prohibits discrimination against people with disabilities in the private sector and state and local governments.

THE ABOVE INFORMATION IS INTENDED AS A GENERAL OVERVIEW OF SEXUAL HARASSMENT AND DOES NOT CARRY THE FORCE OF LEGAL OPINION.

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