

Understanding Sexual Harassment Pocket Guide

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I. INTRODUCTION

Two words that can stir a lot of emotion for you and your employer are the words “sexual harassment.” These words represent a highly charged and often misunderstood emotional issue in the workplace. This pocket guide has been written for the employee, and your employer has distributed it for your benefit. Both you and your employer share a responsibility to end harassment in the workplace. All workers need to know how to recognize and understand the sexual harassment. Then, if you are faced with this type of irresponsible behavior, you will know what to do about it.

Some sexually harassing conduct is clearly a violation of law, while other similar conduct may or may not be harassment. The law may not always be clear on what is and what is not a violation of the sexual harassment laws.

The laws that prohibit sexual harassment were designed to prohibit sexually discriminatory conduct in the workplace especially when such conduct is unwelcome or where employment is conditioned upon the granting of sexual favors. However, the personal options available to one who has experienced harassment are usually a matter of law. Just to stop harassment, after it has begun, is not as easy as it sounds. An incident of harassment can result in emotional and psychological issues not only for the harassed employee but for the harasser as well. The ensuing damage that may be caused by an incident may affect the whole company—even the surrounding community.



II. SEXUAL HARASSMENT TODAY

A. What Sexual Harassment is and What it is Not

The law defines sexual harassment as a form of discrimination that is based on unwelcome sexual events, acts, or actions by one person toward another. Sexual harassment is specifically prohibited by Title VII of the Civil Rights Act of 1964, as amended, and it is often redefined by various state statutes.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature generally constitutes sexual harassment when:

- Submitting to such conduct is made, either expressly or implied, as a term or condition of an individual's employment;
- Consent to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual; or
- Any such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

Harassment by itself is often defined as the inappropriate conduct of another that apparently has no legitimate purposes whatsoever. Harassment, without any sexual conduct or behavior, and by itself, *may not* be a violation of either federal or state law. Such conduct might just mean, or give the appearance that, the one who has created a set of circumstances that is uncomfortable for someone else has used poor behavioral judgement, making the work environment uncomfortable. Just because a work environment is "uncomfortable" doesn't necessarily mean that there is a violation of the sexual harassment laws.

B. Sexual Harassment is About Power and Control

Harassment is generally about power, control, or a psychological need for attention. It can come about because of personal insecurity, the need for recognition, and the need for unexpressed or unfulfilled

III. BEHAVIOR, A KEY INGREDIENT

People can be recognized by four primary types of behavior. These character types are described here in a greatly simplified fashion. All of us have one or more of these character types woven into our own personalities.

A. Four Primary Behavior Types

1. *Confrontational*

One who is confrontational displays a tendency to fight, argue, antagonize, torment, cause strife, etc. An individual with this type of dominant behavior seeks to be “right” at all costs.



2. *Sociable*

Among the behaviors associated with the sociable individual are: being likeable, gregarious, companionable, jovial, extroverted, and playful. See how the sociable behavior differs significantly from the confrontational behavior?

3. *Rational*

Rational people tend to be judicious, wise, sensible, analytical, inquisitive, and logical.

4. *Agreeable*

The agreeable individual is pleasant, congenial, good-natured, supportive, gentle, kind-hearted, and mild-mannered.

B. Who Do You Know?

There are people you know that fit each of these types. Stop for a minute and reflect on who you would like to be alone with on an island and then associate the behavior types with those people. Did you choose the confrontational, rational, sociable or agreeable?

The more difficult challenge is to identify more than one of these behavior types in others with whom you come into daily contact. If you are married, try this

IV. AVOIDING THE TRAPS OF HARASSMENT

A. Your Own Personal Behavior

Just how important is your personal behavior: how you act, how you dress, your communication with co-workers, your personal demeanor? It is critical. Not only in the process of ending sexual harassment, but to your being seen as a professional in the workplace. Personal behavior (“attitude”) will control just how far you will go in life itself. The phrase “Your attitude controls your altitude.” is used by aircraft pilot instructors. It means that the higher the nose of the aircraft is to the horizon, the higher the airplane will go. There are behaviorists who have used the same phrase. It is one of the major truths of life. How you are viewed by others is not only the value you place upon your contribution to your workplace but your contribution to your life itself.

Your demeanor contributes to whether or not you will become the victim of the ugly act of harassment. Make a personal behavioral assessment of yourself with a little test. This booklet is yours to keep, so no one else will look at how you view yourself. The topics are not exhaustive, but they will give you a look at your interpersonal direction and how susceptible you may be to an act of sexual harassment.

Use the four behavior classifications that you read earlier in this booklet (confrontational, sociable, rational, and agreeable) to complete the following blanks.

Behavior Assessment Quiz

Your personal behavior. How would you classify your behavior styles?

I am more _____
than I am _____.

Others see me as _____
rather than _____.

I want to be more _____
and less _____.

V. COMMON BARRIERS INHIBITING THE REPORT OF SEXUAL HARASSMENT

A. Personal Perspectives About the Fairness of Management

In a responsible work environment, sexual harassment and other discriminatory behavior is not tolerated. When management is sneaky or irresponsible, then discrimination and sexual harassment are more likely to be present. This statement is supported by the conclusions reached by the author after studying hundreds of cases of harassment. Here is a first-person report of the author's investigation of one such case:

CASE: Mr. Brown Messes Around

Some time back I received a joint report from a female employee and the female personnel manager who both told me that their male boss had created a hostile and abusive work environment for them. The boss was a member of the senior management team and quite good looking. According to both complainants he was considered by other female co-workers to be a "lady's man." His management style, when his superiors were not looking, appeared to support the goals and objectives of the company. He met his financial goals and had little or no complaints from customers.

One evening approximately nine months prior to receiving this complaint, the senior manager, who I will call Mr. Brown, was drinking with employees who were off duty and with some friends. Mr. Brown, who was married with two children, decided that he wanted to discuss various sexual issues with his guests. Along with those discussions he also directed sexually charged comments and implications toward his two subordinates asking them to participate in various sexual acts not only with him but with his male guests.

The female co-workers were outraged but did not vocalize their feelings about his conduct at the time. Following careful consideration about what might happen if they reported his behavior they chose to

VI. WHAT TO DO IF YOU ARE A VICTIM

During the pervious chapters we have suggested various courses of action that are available to you if you become the victim of sexual harassment. The purpose of this chapter is to summarize the various considerations that are available to you.

These considerations are not in any particular order. Hopefully you will never have to use any of them. However, sexual harassment in the workplace will not just go away. To be informed and prepared is always the most sensible course of action.

A. Review Company Policies Regarding the Complaint Procedure

A responsible employer has a written complaint procedure and has distributed that procedure to all employees. The written complaint procedure is either in your current employee handbook, posted on the employee bulletin board, or there is a copy in the office of the person who is handling personnel matters for your company. Generally that person is the Director of Human Resources.

After reviewing that policy follow the instructions provided by your employer. The policy is written for your protection.

B. Report to Management or a Third Party

Your employer may have had the foresight to add a Third party complaint reporting system to the internal complaint procedure. The third party is an outside service or agency not connected with the company. They are able to look at the facts without being influenced by any prior knowledge of the individuals involved. Even if you have reported a complaint of harassment to management or the designated representative of management, you should also contact the third party reporting system. By taking this extra precaution you can be confident that you have reported the matter and that your company



VII. RETALIATION

Retaliation is the act or acts of any individual or the company who wants to get even, or acts in a vindictive manner where the benefits of employment are lost, modified, or altered in any way whatsoever, toward another person after that person has made a complaint about a management or legal practice, especially sexual harassment.



While this section is not lengthy it is very important for you, your supervisors and managers, as well as the employer to understand the implication of any type of retaliatory conduct after a report of sexual harassment has been made. Whether the reported conduct is valid or invalid, retaliation in any form is not allowed. Large lawsuits have resulted from retaliatory conduct.

The law protects anyone who exercises their legal right to take advantage of a legal process for which they are entitled to participate. More importantly, the courts impose serious monetary sanctions when the employer and manager or supervisor of the employer, or any agent or other person acting in behalf or at the direction of the employer retaliates in any way toward a person who has taken advantage of a legal process to which they are entitled.

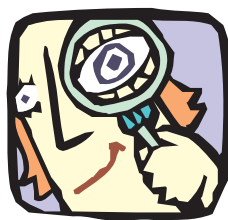
Retaliation is a violation of the law for which there are serious penalties.

VIII. A PROCESS FOR THE ACCUSED

Being accused of sexual harassment is a most difficult situation to be faced with. Almost without exception the first statement that is made by an accused is a statement like “I didn’t do it.” Generally, the second thing that is asked or said is, “Who said I did?” The responses to either of these questions can lead to other more serious legal issues such as slander, liable, or defamation. The employer is now on the spot. While confidentiality of an investigation is important, the right of a person who is accused of sexual harassment is also a substantial consideration. There are no correct answers to this dilemma.

Once charged with sexual harassment, the accused should listen carefully to what is being said and take notes so he/she can recall this information later. More importantly, the accused should make a special effort to recreate in his or her mind the circumstances that could have caused an accusation of sexual harassment by another person. Remember that Federal and some state laws require any employer who receives a complaint of harassment to conduct a complete and thorough investigation into the complaint. That means any complaint—no matter how trivial — and regardless of whether the information appears to be true or untrue.

Any defensive statement that is made by a person who is accused of sexual harassment may or may not be truthful. It is up to a qualified investigator, experienced in the investigation of matters involving sexual harassment, to determine the facts of the allegation and then make a determination as to the truth or falsity of the accusation and to those facts that are available.



Often an employer will suspend an individual who was accused of sexual harassment. This type of suspension is not generally classified as a punishment. It should be for the purpose of separating the accused and the accuser and any supporting wit-

IX. AFTERMATH

There is an often-painful aftermath that follows any complaint or allegation of harassment. The perpetrator, the victim, the witnesses, management, and even the surrounding community may carry away scars and psychological images of what has just taken place. The aftermath can be extremely negative. The damage is unique to each sexual harassment investigation and its outcome.

Individuals accused of sexual harassment tell me their lives became so disrupted that they faced divorce as well as the stigma caused by a complaint of sexual harassment. Victims also may see their private lives similarly affected.

Here's a true case once investigated by the author:

CASE: *The Stalking Supervisor*

The investigation of a sexual harassment charge was centered on a male supervisor in a manufacturing company. The male supervisor was not the direct supervisor of the female victim. When he saw the female employee in the lunchroom the male supervisor would make comments about how she smelled. He equated her smell with the odor of manure. During the investigation he assured me that he believed they were playing and that he had done nothing to create a hostile and abusive work environment. When I interviewed her she told me that the supervisor had on a number of occasions made a specific reference to a particular place on her body where he believed the smell was coming from.

After the investigation the company imposed, among other disciplinary actions, a rule that the supervisor was not to associate or interact with the female employee for any reason whatsoever. Further, that if he needed to discuss anything with her concerning her work performance he was to do it through her supervisor.

During the months that followed, the female victim began to see the supervisor lurking behind storage cabinets, following her when she went across the manufacturing floor, and in her words "showing up"

X. CONCLUSION

Will sexual harassment ever end?

People being the imperfect creatures that they are, sexual harassment will probably never go away entirely.

There are those individuals who for one reason or another behave in such a way that is offensive to others without regard for the impact of such behavior. They impose their unstable, controlling influence upon others. There are those employees who may, upon occasion, display unwelcome flirtations in the workplace. Still others will not respect the privacy and of their co-workers.

However, through education, understanding, and a commitment by management, supervision, and co-workers to end sexual harassment, most of this disruptive behavior can be eliminated from the workplace. Start with the following basic steps:

- Don't let harassment build up by failing to speak out at the first instance.
- Document any occurrences in writing, and get witnesses wherever possible.
- Be aware of your company's policy for reporting harassment, and use it when necessary.
- If harassment continues after you have said "No" to the perpetrator, you have reported it, or if the company's reporting procedure does not seem to be working, contact state and Federal authorities,
- If criminal laws are being violated, contact law enforcement authorities.

