

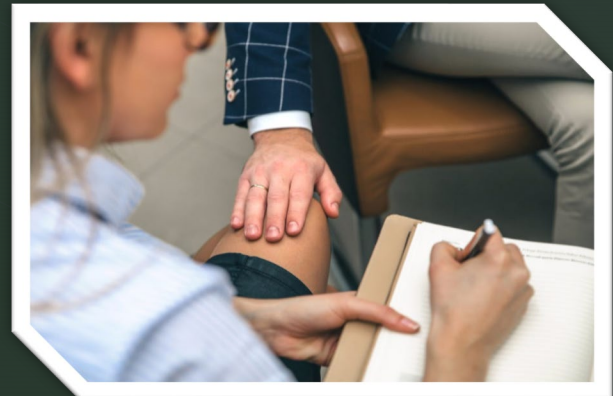


SEXUAL HARASSMENT IN THE WORKPLACE

IN-SERVICE TRAINING FOR
ALL EMPLOYEES

Objectives

- Define Sexual Harassment and offensive behaviors that can be considered harassment
- Explain the statutory regulations and legal background of Sexual Harassment
- Identify the effects that sexual harassment has on people
- Recognize that sexual harassment of any type is a form of discrimination and will not be tolerated
- Implement ways of handling claims of sexual harassment
- What you can do about sexual harassment claims



Legal Background

- *The Illinois Human Rights Act* makes it a civil rights violation “[f]or any employer, employee, agent of any employer, employment agency or labor organization to engage in sexual harassment.” 775 *ILCS 5/2-102(D)*.
- *The State of Illinois* encourages employers to adopt and actively implement policies to ensure their workplaces are safe for employees to report concerns about sexual harassment without fear of retaliation, loss of status, or loss of promotional opportunities.
- *The Illinois General Assembly* finds that tolerance of sexual harassment has a detrimental influence in workplaces by creating a hostile environment for employees, reducing productivity, and increasing legal liability.





Legal Background continue...

- **Title VII of the Civil Rights Act of 1964**
 - Protects employees and job applicants from employment discrimination based on race, color, religion, sex and national origin
- **Civil Rights Act of 1991**
 - Amends several sections of Title VII to strengthen and improve Federal civil rights laws and provide for the recovery of compensatory damages in Federal sector cases of intentional employment discrimination
- ***Faragher v. City of Boca Raton 1998***
 - A case where Supreme Court deemed supervisory employee whose sexual harassment of subordinates has created a hostile work environment
- ***Burlington Industries, Inc. v. Ellerth 1998***
 - A case where Supreme Court deemed employers as liable if supervisors create a hostile work environment for employees

What is sexual harassment?



- Illinois Human Rights Act, “Sexual harassment” means any unwelcome sexual advances, requests for sexual favors, or any conduct of a sexual nature
 - Submission is made explicitly or implicitly in term or condition of employment
 - Submission or rejection of conduct is used as basis of employment decisions
 - Such conduct effects work performance or creates an intimidating, hostile or offensive environment
- The behavior must be unwelcome and considered offensive by the victim

Types of Sexual Harassment

- Quid Pro Quo
- Hostile Work Environment



QUID PRO QUO

“Quid pro quo” literally means “this for that”

Ex: “an employee being pressured by a superior to provide sexual favors in order to avoid being fired or demoted, or in order to get a promotion, raise or perks



Hostile Work Environment

- Hostile Work Environment occurs when verbal or non-verbal behavior in the workplace:
 - Unwelcome sexual advances
 - Unwelcome and unwanted sexual attention
 - Requests for sexual favors
 - Any conduct of a sexual nature interfering with individuals work performance
 - Focuses on the sexuality of another person or occurs because of the person's gender
 - Is severe or pervasive enough to affect the person's work environment creating an intimidating, hostile or offensive working environment



Sexual Harassment: Legal Definitions

QUID PRO QUO

- (This for that)
- Someone in a position of **power**, who demands a sexual **favor in exchange** for a **benefit** or for not imposing a negative consequence

VS

HOSTILE WORK ENVIRONMENT

- **Unwelcome** conduct of a sexual nature *or* **based on sex** or gender so **severe or pervasive** that it affects terms and conditions of employment so as to create a **hostile or abusive work environment**

Unwelcome Behavior

- Sexual conduct becomes sexual harassment when the behavior is unwelcome
- Welcome behavior can quickly become unwelcome behavior. What starts off as welcome behavior (consensual joking) can cross a line and become unwelcome behavior
- Consent can be revoked at any time. When someone experiencing sexual harassment behavior says, "stop talking to me like this" it **must stop**. The perpetrator cannot use as a defense "Well you started it." or "You were ok with it at first."



Gender Identity & Sexual Orientation

- A person can be the victim of sexual harassment regardless of the victim's gender identity or the perpetrator's gender identity
- A person can be the victim of sexual harassment regardless of the victim's sexual orientation or the perpetrator's sexual orientation

Employees & Nonemployees

- Employees: co-workers, supervisors, managers
- Nonemployees: not employees but performing services for employer or receive services from employer
- Victims of sexual harassment can include Employees and Nonemployees when sexually harassed by other Employees or Nonemployees
- Victims of sexual harassment can include not only the target of the sexual harassment, but also those Employees or Nonemployees who are Bystanders or Witnesses to the sexual harassment.

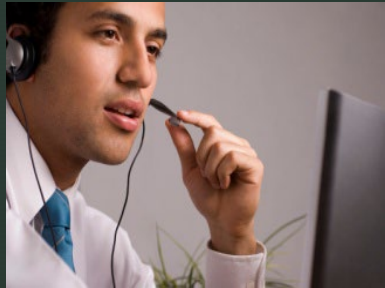
Employees and Nonemployees Sexual Harassment

- The Illinois Human Rights Act prohibits Employees and Nonemployees from engaging in sexual harassment.
- The Illinois Human Rights Act prohibits sexual harassment of Employees and Nonemployees by Customers/Patrons and Third Parties.
- Employers are responsible for sexual harassment perpetrated by their Employees and Nonemployees against other Employees and Nonemployees.
- Employers are also responsible for sexual harassment perpetrated by their Employees and Nonemployees against customers/patrons.

Types of Workplace Harassment



Four Groups of Sexual Harassment



Verbal



Visual



Written



Physical

Examples of Inappropriate Conduct

- Pressure for sexual favors or to go out on a date
- Deliberate touching, leaning over, or cornering another person
- Sexual looks or gestures or whistling at someone
- Sending letters, telephone calls, e-mails, texts, or other materials of a sexual nature
- Sexual teasing, jokes, remarks, or questions
- Referring to another as a “girl,” “hunk,” “doll,” “babe,” “honey,” “tootsie”, etc.
- Actual or attempted rape or sexual assault

Examples of Inappropriate Conduct

- Turning work discussions to sexual topics
- Asking about sexual fantasies, preferences, or history
- Sexual comments, sexual innuendos, or sexual stories
- Touching another employee such as their clothing, hair, or body
- Sexual comments about a person's clothing, body, or looks
- Kissing sounds, howling and smacking lips
- Telling lies or spreading rumors about a person's sex life
- Massaging neck, shoulders, etc.

Sexual Harassment Online Environment

- Our conduct online and through social media can constitute sexual harassment even when it occurs “off the clock”, “off-site”, or even “out of state”
- Includes using e-mail, cell phone texts, internet posting, online comments, blog posts, and social media (such as Facebook, Twitter, LinkedIn, Instagram, YouTube, and Snapchat) to send communications of a sexual nature
- Examples:
 - Flirting and requests/demands to go on a date or intimacy nature
 - Sending inappropriate pictures/videos
 - Using sexual language/comments
 - Cyber stalking

You Witness, Experience or Become Aware of Unwelcome Sexual Conduct

- You have the right to tell the person to stop. The initiating and participating persons must stop the unwelcome behavior upon request. If they continue the behavior or retaliate against you because you asked them to stop, they can be found to have violated the law by engaging in sexual harassment or retaliation.
- You have the right to report the sexual harassment. Several reporting options are available. The option you choose may depend on the nature and severity of the unwelcome conduct of a sexual nature. Persons who report sexual harassment or participate in investigations are protected from retaliation.

Who Are Harassers?

Anyone can harass, just as anyone can be the target of harassment regardless of sex, sexual preference, age, or professional position.



Who Are Harassers?

Submission to a sexual activity by the employee citing harassment is not a defense an employer can use to avoid liability in a sexual harassment suit



People Harass Others to:

- Express dominance or power
- Organizationally or socially control someone
- Attempt to seek peer approval
- Use as a bullying tactic



Sexual Attraction vs. Sexual Harassment

Sexual Harassment is a form of discrimination and may have nothing to do with one person's physical attraction.



It is a misuse of POWER!!!

Basic Steps for Handling Complaints

1. Take the complaint
2. Interview the involved individuals
3. Initiate the investigation
4. Take the appropriate action



HR Investigation

How to Conduct a Fair HR Investigation



Reporting Sexual Harassment Options

- 1. Call the State of Illinois Sexual Harassment & Discrimination Helpline
 - Call: 1-877-236-7703
- 2. Report the Incident to Your Employer, Supervisor, or any member of management you trust; and Human Resources
- 3. File a Charge with the Illinois Department of Human Rights (IDHR)
 - Call: 1-800-662-3942
- 4. File a Charge with the U.S. Equal Employment Opportunity Commission (EEOC)
 - Call: 1-800-669-4000

Employer Responsibility

- Manager/Supervisor Harassment
 - Employers are strictly liable for sexual harassment perpetrated by its members of management regardless of whether the employer knew of the harassment.
- Co-Worker & Nonemployee Harassment
 - Employers are liable for sexual harassment perpetrated by an employee (co-worker) or nonemployees (vendors) only if the employer knew or reasonably should have known of the harassment and failed to take prompt corrective action.

Employer Responsibility

- Prevent the incidence of sexual harassment in their workplaces
- Investigate incidents of sexual harassment in their workplaces
- Correct the incidence of sexual harassment in their workplaces



Employer Responsibility PREVENTION

- 1. Develop, implement and regularly communicate the employer's sexual harassment policy
 - Policy and procedures
- 2. Provide training for managers and employees on sexual harassment prevention
 - Training, in-service, staff meeting
- 3. Ensure clear communication on how to report incidents of sexual harassment or conduct of a sexual nature


Employer Responsibility

PREVENTION

- 4. Managers and supervisors should monitor their work environment to ensure the workplace is free of sexual harassment
 - Supervisors should be aware of the conduct within their supervision
- 5. Managers and supervisors must lead by example and model appropriate conduct
 - Refrain from engaging in conduct of a sexual nature
- 6. Managers and supervisors should conduct a sexual harassment climate check throughout the year
 - Discuss the topic at a team or staff meeting




Employer Responsibility INVESTIGATION

- 1. Immediately respond to a complaint of sexual harassment and initiate an inquiry or investigation
 - 2. Interview the complainant (victim) and take reasonable action to protect the victim from retaliation or experiencing further sexual harassment during the investigation
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Employer Responsibility INVESTIGATION

- 3. Interview all relevant witnesses
 - 4. Interview the alleged perpetrator of the sexual harassment
 - 5. Document the investigation results and maintain the file as an employment record
 - 6. Take corrective action as appropriate
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Questions NOT to ask the recipient


- Avoid “why” questions such as, “Why didn’t you do something about this before?”
- Don’t ask leading questions such as, “Would you want to continue working here if the behavior continues?”
- Avoid asking multiple choice questions such as, “Did he touch you on your arm, the shoulder, or the face?” Instead ask, “Where did he touch you?”





Employer Responsibility


CORRECTIVE MEASURES

- 1. Take appropriate corrective disciplinary action up to and including termination of employment where organizational policy has been violated
 - 2. In situations where the conduct in question did not rise to the level of sexual harassment or a violation of policy, but is concerning or may be considered grooming behavior, consider counseling, training and closer supervision of the employee
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Employer Responsibility

CORRECTIVE MEASURES

- 3. Take reasonable action within the organization to reduce the likelihood of future sexual harassment incidents by updating policies and communicating them to the workforce; providing supplemental or tailored sexual harassment training; or restructuring the working environment or reporting relationships
 - 4. Follow up with the complainant (victim) at regular intervals to ensure they and the workplace remains free from sexual harassment
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The Company Plan for Eliminating Sexual Harassment

- Review your behavior and that of others for evidence of illegal or impermissible conduct
- When such behavior is identified ask these questions:
 1. Is the appropriate conduct or behavior in the workplace?
 2. Is it legal (in accordance with the law)?
 3. Is it permissible (in line with regulations)?
 4. Is it proper (defensible by general standards)
 5. Could the behavior in any way be seen as discriminatory?
 6. Could the behavior have a disruptive effect upon an employee or organizational unit?

The Company Plan for Eliminating Sexual Harassment



- Sexual behaviour that makes you feel uncomfortable
- Touching
- Unwelcome sexual jokes
- Unwarranted questions about your sex life
- Whistling
- Rude gestures
- Inappropriate staring

What Can You do to Prevent Sexual Harassment?



If you become aware of the questionable behavior and even if there is no complaint you:

- ▶ Must take immediate and corrective action
- ▶ Inform top manager and/or Human Resources
- ▶ Document action taken

What Can You do to Prevent Sexual Harassment?

Continues...

- ▶ Communicate action taken to the affected employee/client, explain what he or she should do if the problem should occur
- ▶ Advise of their rights and how to use the complaint process

Always Remember To:

Report Promptly



**Any inappropriate or bullying behavior
to your Supervisor and the Human
Resources Department**

HARASSMENT

WILL NOT BE TOLERATED

It is our company policy to provide a safe workplace. We will not tolerate any form of harassment.

Examples of harassment:

- Verbal abuse- shouting, yelling, swearing, name calling, and vulgarity
- Spreading malicious rumors, gossip, and lies
- Threats or physical abuse
- Intentional isolation, ignoring, and excluding co-workers
- Intimidation or manipulation
- Making false accusations of co-workers mistakes
- Sabotaging or impeding a person's work
- Cruel comments, belittling, and insults
- Unjust, harsh, and constant criticism
- Aggressive behavior
- Sexual harassment, unwanted touching, or stalking
- Personal and offensive jokes
- Invading a person's privacy or personal belongings
- Unequal treatment due to race, gender, age, size, religion, or country of origin
- Taking credit for someone else's work



Post Test

Quid Pro Quo harassment is a form of sexual harassment when there is a request or demand of sexual favors in exchange for employment benefits or threatening reprisals if the favors are not given?

True or False

Post Test

Terms of endearment with co-workers, i.e. "honey," "dear" are considered verbal abuse and charges can be brought up against the employee?

True or False