

Sexual Harassment at Work

The U.S. Equal Opportunity Employment Commission (EEOC) defines workplace sexual harassment as unwelcome sexual advances or conduct of a sexual nature which unreasonably interferes with the performance of a person's job or creates an intimidating, hostile, or offensive work environment. Sexual harassment can range from persistent offensive sexual jokes to inappropriate touching to posting offensive material on a bulletin board. Sexual harassment at work is a serious problem and can happen to both women and men.

Sexual harassment is a form of gender-based discrimination that is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity, and the status of being transgender. Sexual harassment is not limited to sexual contact, touching, or expressions of a sexually suggestive nature. Sexual harassment includes all forms of gender discrimination including gender role stereotyping and treating employees differently because of their gender. *

Both state and federal laws protect employees from sexual harassment at work.

Types of Sexual Harassment

There are two recognized types of sexual harassment -- 1) quid pro quo and 2) hostile work environment.

Under the quid pro quo form of harassment, a person in authority, usually a supervisor, demands that an employee tolerate sexual harassment as a condition of getting or keeping a job or job benefit, including promotions and raises. A single instance of harassment is sufficient to sustain a quid pro quo claim (e.g., a superior demand you kiss her/him in order to keep your job).

Hostile work environment harassment is grounds for legal action when the conduct is unwelcome, based on sex, and severe or persistent enough to create an abusive or offensive working environment. A single instance of harassment is not sufficient to sustain a hostile work environment claim; to be substantiated, there must be evidence of reoccurring incidents.

Examples of Sexual Harassment include but are not limited to the following:

- Sharing sexually inappropriate images or videos, such as pornography with co-workers
- Sending suggestive letters, notes, or e-mails
- Displaying inappropriate sexual images or posters in the workplace
- Telling lewd jokes, or sharing sexual anecdotes
- Making inappropriate sexual gestures
- Staring in a sexually suggestive or offensive manner, or whistling
- Making sexual comments about appearance, clothing, or body parts
- Inappropriate touching, including pinching, patting, rubbing, or purposefully brushing up against another person

- Asking sexual questions, such as inquiries about someone's sexual history or their sexual orientation
- Making offensive comments about someone's sexual orientation or gender identity

These are just a **few** examples of sexual harassment.

Gender Identity*

Understanding gender diversity is essential to recognizing sexual harassment because discrimination based on sex stereotypes, gender expression and perceived identity are all forms of sexual harassment. The gender spectrum is nuanced, but the three most common ways people identify are cisgender, transgender, and non-binary. A cisgender person is someone whose gender aligns with the sex they were assigned at birth. Generally, this gender will align with the binary of male or female. A transgender person is someone whose gender is different than the sex they were assigned at birth. A non-binary person does not identify exclusively as a man or a woman. They might identify as both, somewhere in between, or completely outside the gender binary. Some may identify as transgender, but not all do. Respecting an individual's gender identity is a necessary first step in establishing a safe workplace.

Other Forms of Harassment

Any harassment or discrimination based on a protected characteristic is prohibited in the workplace and may lead to disciplinary action.

A protected characteristic is considered:

- | | |
|-----------------------------------|----------------------|
| • Age | • Race |
| • Creed | • Sexual orientation |
| • National origin | • Sex |
| • Military status | • Marital status |
| • Disability | • Gender identity |
| • Domestic violence victim status | |
| • Criminal history | |

If you feel that you have been harassed, please find the complaint form also attached to our documents section and can be found via the Kulanu employee page:

www.kulanukids.org/employee

Strategies to Stop the Harassment

There are several steps to employ in putting an end to workplace sexual harassment. First, you should personally try to end it. If that doesn't work, look at your employee handbook or manual and see what policies the company has in place and take your complaint to that level. No matter what, you should document everything (each instance of harassment, etc.).

Personally Inform the Harasser His Actions Are Offensive

While this is the most difficult act for victims of harassment, it is ultimately the most effective method of ending the behavior. The harasser may not even be aware that her/his behavior is offensive, and it is always best to "nip" it in the bud before inappropriate comments or jokes, left unchecked, turn into something uglier.

If you are uncomfortable facing the harasser, write a short letter or email letting her/him know you want the behavior to stop. If you're uncomfortable doing this, tell a supervisor. If you write a letter, make a copy. If you write an email, send it from a company email address. You'll want to document every action that's taken by you, along with the response.

Retaliation

What is retaliation in the workplace?

Retaliation is punishment of an employee by an employer for engaging in legally protected activity, such as making a complaint of harassment to a governmental body or participating in workplace investigations

Retaliation may include adverse employment actions such as the following:

- Disciplinary measures
- Denial or reduction of pay or benefits
- Demotion
- Denial of promotion
- Job or shift reassignment
- Involuntary termination (e.g., layoff or firing)
- Verbal or physical abuse
- Isolating the employee

Investigation

- Employer will conduct an immediate review of the allegations and take interim actions
- Relevant documents, emails or phone records will be requested, preserved and obtained
- Interviews will be conducted
- All parties are notified of the final determination and administrative actions

NYS Hotline Information:

New York State Division of Human Rights was directed to establish a toll-free, confidential hotline for complainants of workplace sexual harassment. Employees can call the hotline and receive advice on their legal rights as applied to their specific circumstances from attorneys, who staff the hotline pro bono. As of July 20, 2022, the hotline is operational from 9 a.m. to 5 p.m., and can be reached at 1-800-HARASS-3 (1-800-427-2773).

Bystander Intervention*

Any employee witnessing harassment as a bystander is encouraged to report it. A supervisor or manager that is a bystander to harassment is required to report it. There are five standard methods of bystander intervention that can be used when anyone witnesses harassment or discrimination and wants to help.

1. A bystander can interrupt the harassment by engaging with the individual being harassed and distracting them from the harassing behavior.
2. A bystander who feels unsafe interrupting on their own can ask a third party to help intervene in the harassment;
3. A bystander can record or take notes on the harassment incident to benefit a future investigation;
4. A bystander might check in with the person who has been harassed after the incident, see how they are feeling and let them know the behavior was not ok; and
5. If a bystander feels safe, they can confront the harassers and name the behavior as inappropriate. When confronting harassment, physically assaulting an individual is never an appropriate response.

The guidelines above can serve as a brief guide of how to react when witnessing harassment in the workplace.

Supervisor Responsibilities*

Supervisors have a responsibility to prevent sexual harassment and discrimination. If there is no lessening of the harassment after personal appeals to stop, then take your complaint to the next level. Be sure to follow all agency protocols dealing with sexual harassment (and document everything to show that you took every action the company recommended). At each step, if you do not get the proper response from management, continue escalating the complaint up the chain of command:

All supervisors who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing or discriminatory behavior, or for any reason suspect that sexual harassment or discrimination is occurring, are required to report such suspected sexual harassment to Human Resources. Supervisors should not be passive and wait for an employee to make a claim of harassment. If they observe such behavior, they must act.

Supervisors can be disciplined if they engage in sexually harassing or discriminatory behavior themselves. Supervisors and managers can also be disciplined for failing to report suspected sexual harassment or allowing sexual harassment to continue after they know about it. Supervisors will also be subject to discipline for engaging in any retaliation. While supervisors have a responsibility to report harassment and discrimination, supervisors must be mindful of the

impact that harassment and a subsequent investigation has on victims. Being identified as a possible victim of harassment and questioned about harassment and discrimination can be intimidating, uncomfortable and re-traumatizing for individuals. Supervisors must accommodate the needs of individuals who have experienced harassment to ensure the workplace is safe, supportive, and free from retaliation for them during and after any investigation.

SUPERVISOR-DEPARTMENT DIRECTOR-HUMAN RESOURCES

Follow Kulanu's procedures and document everything. If you do not let us know and do not follow company procedures, you are not giving us a chance to stop the harassment. Let us know about the situation and document it.

Documentation does not end at keeping emails and memos to co-workers and supervisors. You should write down each instance of harassment as it happens. This includes specific information, in addition to date and time, such as the people involved, onlookers if any, their reactions, how the event made you feel and affected your work and general wellbeing, etc.