

# **Sexual Harassment**

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# Learning Objectives

- Explain the legal basis for the prohibition of sexual harassment as a form of discrimination
- Define two forms of sexual harassment: quid pro quo and hostile working environment
- Explain the essential components of a workplace sexual harassment policy

# Learning Objectives

- Explain steps to be taken in investigating claims of sexual harassment in the workplace
- Explain advisable courses of action when evidence of sexual harassment is and is not found

# Complaints

- Sexual harassment complaints began skyrocketing in the mid 1990's

# Why?

- Increase in occurrence?
- Silence broken?
- Nothing to lose?

# Awards Include:

- Back pay
- Damages
- Promotions
- Reinstatements

# Managers and Owners

- Recognize
- Prevent
- Resolve

# Managers and Owners

- **Recognize**
- Prevent
- Resolve



# Forms of Harassment

- Blatant
- Subtle

# You Decide:

- Sexual harassment test



# Prohibited Sexual Harassment

- “Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature...”  
(EEOC)

# EEOC Involvement

- Title VII
  - Civil Rights Act

# Title VII

- Prohibits discrimination on the basis of gender, race, color, religion, or national origin in any employment condition (hiring, firing, promotion, and compensation)

# Gender

- Sexual harassment is gender discrimination

# Two Types of Harassment (EEOC)

- Quid pro quo
- Hostile working environment

# Test Items # 1 - 3

- Quid pro quo harassment



# Quid Pro Quo

- Latin for “compensation”

# Quid Pro Quo

- The victim is forced to choose between submission to the sexual demands of a supervisor or the loss of a job or job benefits

# Loss of Job or Benefits

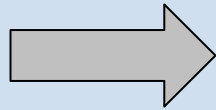
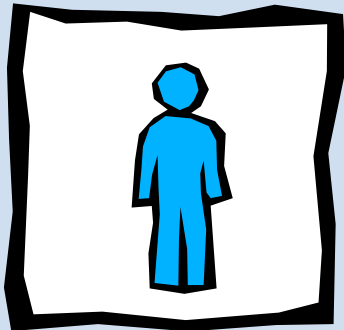
1. Being fired
2. Losing a promotion
3. Losing a salary increase

# Employer Liability

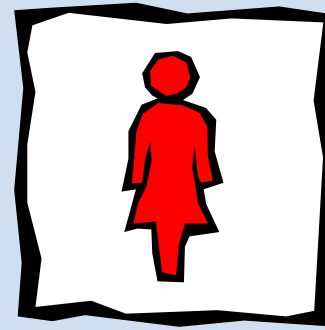


# Sexual Harassment

Male



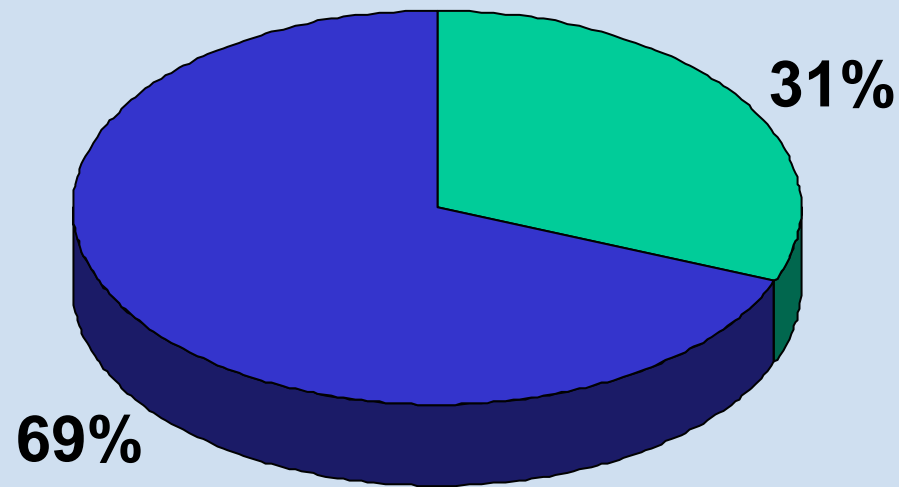
Female



2. A female employee is offered a promotion on the condition she submit to the sexual advances of her male boss

# Female Workers

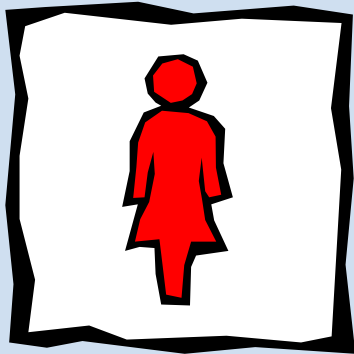
- Sexually harassed by males



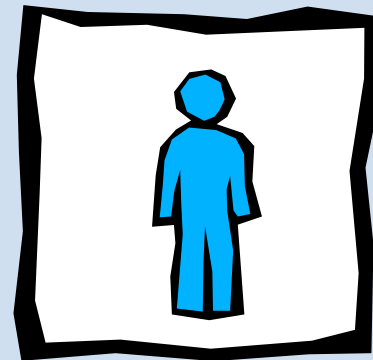
(Louis Harris Poll)

# Sexual Harassment

Female



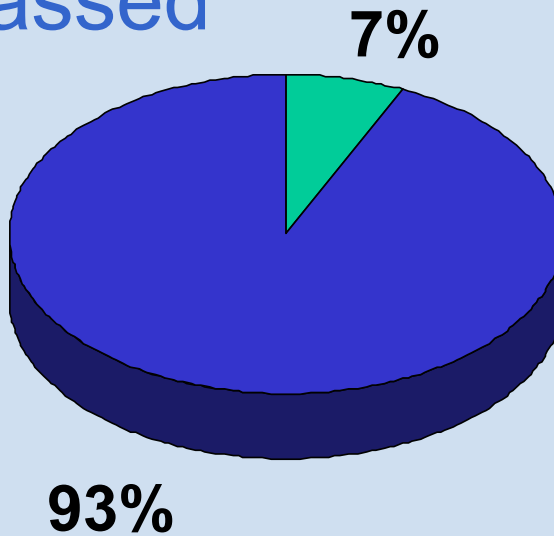
Male



3. A male employee rejects the sexual advances of a female supervisor and is denied a salary increase

# Male Workers

- Sexually harassed



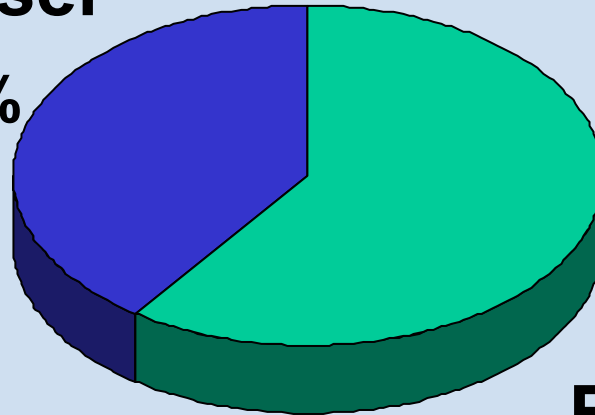
(Louis Harris Poll)



# Male Workers Who Are Harassed

**Male harasser**

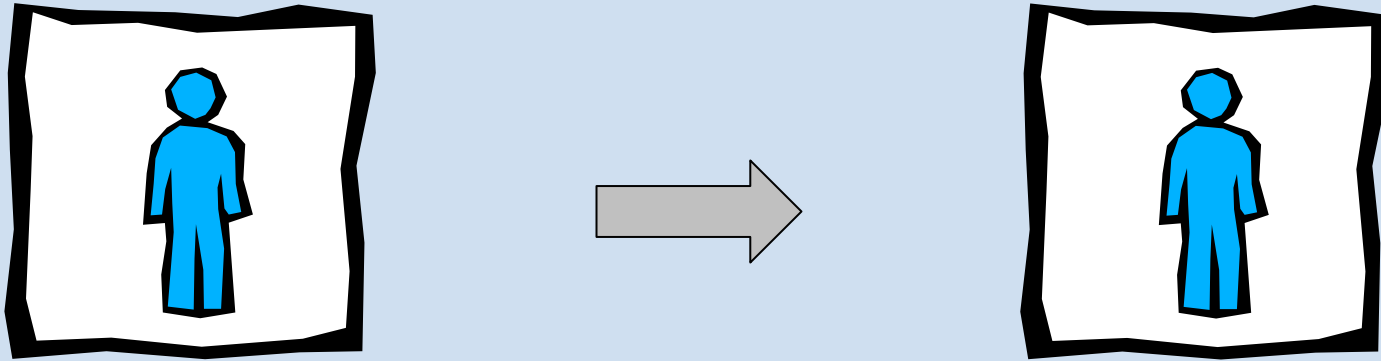
**40%**



**60%**

**Female harasser**

# Same Sex Harassment



1. An employee rejects a homosexual advance made by a supervisor and is fired as a result

# Test Items # 4 – 16

- Hostile work environment

# Hostile Work Environment Occurs When:

- The activity complained of is pervasive or severe, creating an intimidating or abusive workplace

# Test Items # 4 - 9

- 4. and 5. Repeatedly commenting on appearance
- 6. and 7. Repeatedly touching
- 8. and 9. Repeatedly discussing sexual topics

# Unwelcome Activities

- Isolated occurrence – not harassment
- Repeated activity considered pervasive  
– hostile environment claim could be made

# **Wardrobe Compliments – Items # 10 – 12?**

11. Dress accentuates figure

12. Dress is sexy

# Employee Reluctance

- “This offends me”



# Reasons for Reluctance

- Fear of reprisal
- Embarrassed
- Blame self
- Others don't object
- Fear label – “troublemaker”

# **Sexually Explicit Pictures – Items # 13 & 14**

- Prolonged - pervasive - hostile work environment

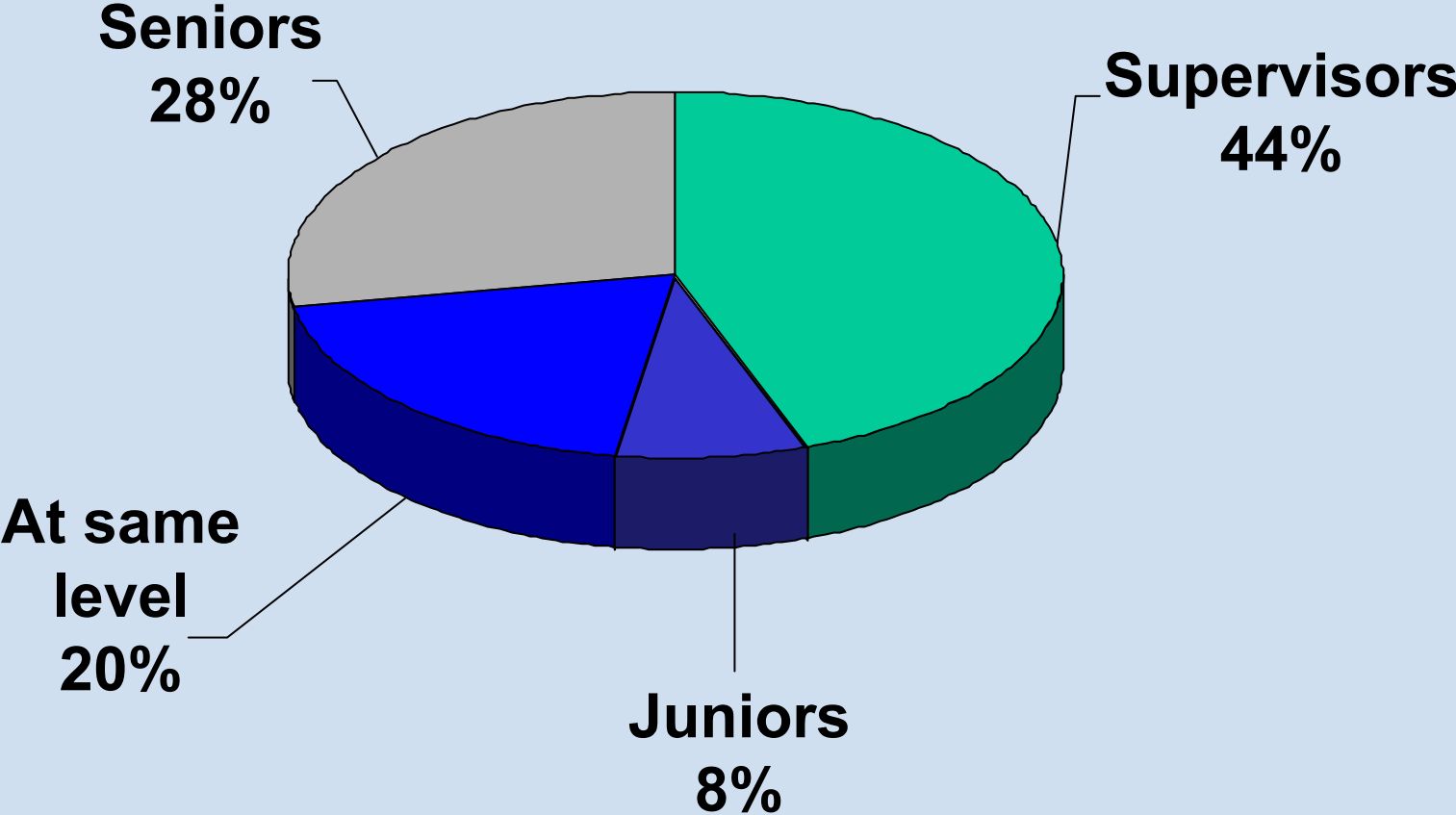
# Compare Test Responses # 13 vs. #14

13. Offender is a non-supervisor

14. Offender is a supervisor

- Equally serious regardless of job title

# Harassers (of Women) Were:



(Louis Harris Poll)

# Hostile Work Environment

(Does Not Require Physical Touching)

- 4. and 5. Verbal comments about appearance
- 8. and 9. Discussion of sexual topics

# Hostile Work Environment

(Does Not Require the Harassment Be Aimed Directly at the Victim)

- 13. and 14. Explicit pictures in work area

# Sex of Offender vs. Victim

- Compare your responses to the following test items:
  - 4 vs. 5?
  - 6 vs. 7?
  - 8 vs. 9?
  - 13 vs. 14?
- Equally serious, regardless of gender

# **Offender is Patient or Customer – Items # 15 & 16**

15. Occasional profanity

16. Repeated, unwelcome, sexual  
innuendos



# Hostile Work Environment

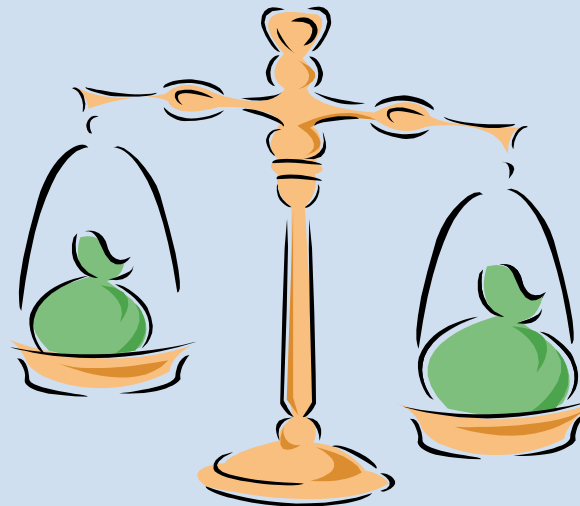
1. Moderately offensive
  - Unwelcome, repeated
2. Severe
  - Unwelcome

# Employer Liability



# Juries' Decision

- Reasonable person standard
- Victim's perception of abuse



# Test Items # 17 & 18

- Office romances

# Supervisor and Subordinate Romance – Item #17

- Problems:
  - Others may seek to recover same benefits
  - “Voluntary” does not mean “welcome”

# **Non-Supervisory Employee Romance – Item #18**

- Problem:
  - Environment has become hostile

# Discourage Office Romances

- Supervisors and Subordinates
  - Quid pro quo

# Don't Forbid Office Romances

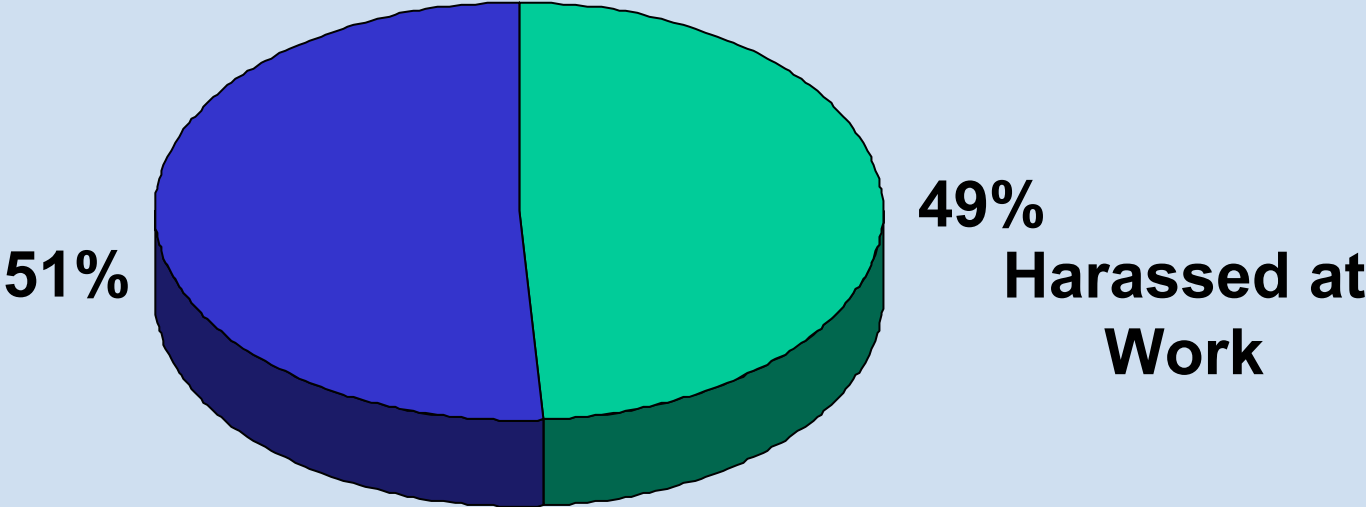
- Invasion of privacy claims
  - Lifestyle discrimination statutes



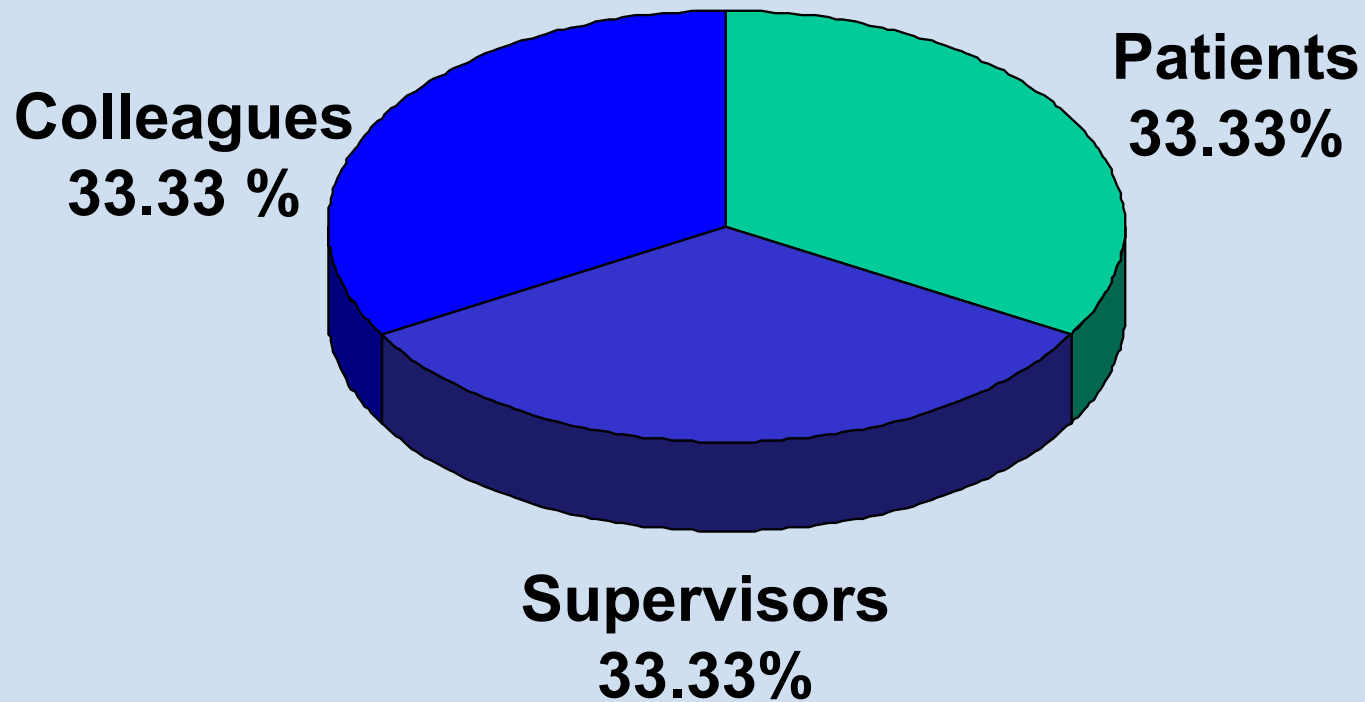
# Sexual Harassment in Pharmacy Practice

- 1200 female pharmacists surveyed
- 662 respondents
- 36% chain pharmacists
- 20% hospital pharmacists

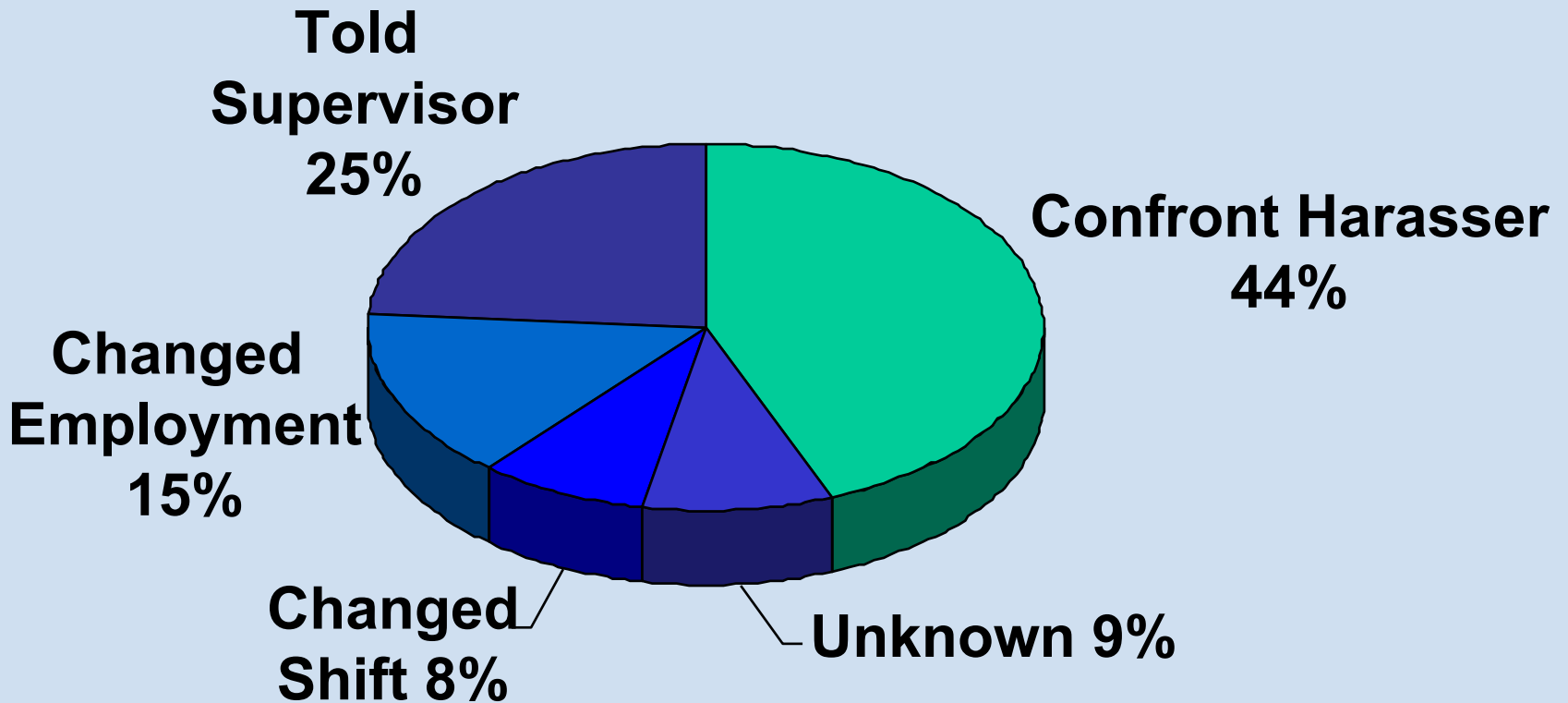
# Female Pharmacists



# Harassers of Female Pharmacists



# Actions Taken by Female Pharmacists



# **Key Points to Understanding Sexual Harassment**

# General Definition

- The activity complained of is of a sexual nature

# Definition Expanded

- Non-sexual activity that is hostile and intimidating and gender directed
  - Examples:
    - Derogatory names
    - Poor work assignments
    - Cruel practical jokes

# Definition Expanded

- Harassment can be toward the opposite sex or the same sex



# Definition Expanded

- The activity must be unwelcome  
(A voluntary relationship isn't always welcome. Whether the activity was solicited, desired, or encouraged is what is relevant)

# Definition Expanded

- Quid pro quo harassment forces a victim to choose between submission to sexual demands of a supervisor or loss of job or job benefits

# Definition Expanded

- Hostile work environment occurs when the activity complained of is pervasive or severe, creating an abusive work place

# Definition Expanded

- A hostile work environment does not necessarily require physical touching and does not require the harassment be aimed directly at the victim

# Definition Expanded

- Employers are liable for the sexual harassment acts of employees (supervisors and their subordinates) and customers/patients

# Title VII

- Applies to public or private businesses with 15 or more employees
- Most states have lowered the threshold below 15

# Causes of Action

- Assault and battery
- Intentional infliction of emotional distress
- Negligent hiring and retention
- “Agency Law”

# Managers and Owners

- Recognize
- **Prevent**
- Resolve



# Workplace Sexual Harassment Policy

- Sample policy
- Keep in workplace policy & procedure manual
  - Include:
    1. Denouncement
      - Not tolerated
      - Illegal
      - Will be investigated
      - False accusations serious

# Workplace Sexual Harassment Policy

## 2. Definition

- EEOC definition
- Quid pro quo, hostile
- Examples

# Workplace Sexual Harassment Policy

## 3. Complaint procedure

- Allows internal resolution
- Take to immediate supervisor
- Possibility that employee filing complaint with alleged harasser
- Allow co-worker present
- Employer accused
  - Differing thresholds
  - Retaliation illegal

# Workplace Sexual Harassment Policy

4. Statement of sanctions for violators
5. Offer protection to those who make charges

Delete “confront the harasser” guidelines, otherwise:

- Employee may file externally
- Sends wrong message

# Managers and Owners

- Recognize
- Prevent
- **Resolve**

# Investigating Claims of Sexual Harassment

- Sample complaint form
- Legal duty to investigate when:
  - A formal complaint is made to the EEOC
  - A direct complaint is made internally
  - An indirect complaint is made
  - Conduct is observed that may constitute sexual harassment

# Proper Investigation Will:

- Reduce or absolve employer liability
- Dissuade legal action
- Facilitate internal resolution

# Who Should Investigate?

- Large organization - contact HRM
  - (You or HRM specialist investigate)
- Smaller business - consider the charge
  - If illegal activity, contact attorney
    - (You or HRM consultant investigate)
  - If not yet illegal, you investigate
    - (Stop activity before illegal)



# Guidelines for Investigation:

- Investigate immediately
  - Timeliness
  - Sincerity
  - Quick action
  - Informal claims resolutions

# Guidelines for Investigation

- Investigate discreetly
  - Uphold confidentiality promise
  - Protect rights of accused
  - Interview in private – no attorneys
  - Facilitates informal claims resolutions
  - Avoid negligent publicizing, invasion of privacy

# Guidelines for Investigation

- Interview complainant
  - Ask and document:
    - Who harassed you?
    - What did the harasser do?
    - When did the harassment occur?
    - Where did it happen?
    - Were there any witnesses?
  - Interview and confirm
    - (sample witness statement)

# Guidelines for Investigation

- Ask and document:
  - Who did you tell?
  - Interview and confirm
  - Telling others establishes unwelcomeness
- Who else has been harassed?
- What did you do in response?
- What do you want done (appropriate protection)?

# Guidelines for Investigation

- Interview the accused
  - Allow to respond to allegation
  - Interview “defense witnesses”

# Guidelines for Investigation

- Make a determination and take action
  - Harassment found
  - No harassment found
- Preserve all evidence
  - Documentation of incidents, interviews, and discipline
  - Physical evidence - - pictures, paraphernalia involved

# Conclusion

- Stop unwelcome sexual behavior
- Know what the law entails
- Limit liability