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 soaring 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

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)
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%
- Female harasser: 60%
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:

- Supervisors: 44%
- Seniors: 28%
- Juniors: 8%
- At same level: 20%

(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

51%

49% Harassed at Work
Harassers of Female Pharmacists

- Colleagues: 33.33%
- Patients: 33.33%
- Supervisors: 33.33%
Actions Taken by Female Pharmacists

- Told Supervisor: 25%
- Changed Employment: 15%
- Changed Shift: 8%
- Confront Harasser: 44%
- Unknown: 9%
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