Sexual harassment essay sample

Prohibited under Title VII of the Civil Rights Act of 1964, sexual harassment is considered a specific form of sex-based discrimination. Specifically, the Act defines sexual harassment as consisting of “ unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature” when such behavior negatively affects the performance of the victim or is responsible in establishing “ an intimidating, hostile, or offensive work environment.” Under Title VII, a sexual harassment case could be brought against any male or female employee who is occupying any position in both public and private organizations with at least 15 employees. It may involve a male employee who is harassing a female employee, a female employee harassing a male employee, or may involve a harasser and a victim from the same gender. A sexual harassment complaint could be made either by the victim or by anybody who have witnessed the act and have felt offended by it. As of 2007, however, most of the victim-complainants were women. Out of the 12, 510 cases filed with the Equal Employment Opportunity Commission (EEOC), only around 16 percent or some 20, 016 cases had male complainants (EEOC, 2008).

In contrast, sex-based discrimination does not involve any unwelcome sexual behavior. It merely refers to practices which discriminate against employees based on their gender. Although like sexual harassment cases sex-based discrimination cases also involve public and private organizations employing 15 workers or more. Under the provisions of Title VII, practices which result to unequal treatment for both applicants and employees based on sex is prohibited. These practices could involve the processes of “ hiring, termination, promotion, compensation, job training, or any other term,

condition, or privilege of employment.” As of 2007, sex-based discrimination cases filed with the EEOC reached a total of 24, 826, 21, 982 cases of which have been resolved (EEOC, 2008).

There are two general types of sexual harassment. The first is called “ quid pro quo” sexual harassment and the second type is what is termed as “ hostile environment” sexual harassment. A quid pro quo is sometimes referred to as a “ put out or get out” kind of deal. This type of sexual harassment involves an exchange of sexual favor with any advantageous employment condition. In other words, when a victim succumbs to a quid pro quo sexual harassment, the harasser takes an action which positively affects the employment status of the victim. Conversely, when the victim rebuffs the harasser, the latter’s reaction would be to do something to harm the employment status of the victim (Preventing Sexual Harassment: A Fact Sheet For Employees, n. d.).

For example, a supervisor or a middle manager promises a female probationary employee that she would be made a regular employee if she consents to spend a night with the former. When the subordinate rejects the proposal, the supervisor or middle manager retaliates by refusing to make her appointment regular (*Barnes v. Train, 13 FEP Cases 123 [D. D. C]* as cited in Preventing Sexual Harassment: A Fact Sheet For Employees *) .* Another example is when a female employee was forced to maintain an unwanted sexual relationship with her supervisor because the supervisor had threatened her with termination otherwise (*Meritor Savings Banks v. Vinson, 477 U. S. 57, 40FEP Cases 1822* as cited in Preventing Sexual Harassment: A Fact Sheet For Employees, n. d.).

Hostile environment sexual harassment, on the other hand, does not result to any demotion in rank, dismissal, or any other economic disadvantage because the harasser is not in a position to cause such a result. Instead, the victim is subjected to demeaning and sexually offensive language (orally as well as through rude letters, graffiti, or other literature forms), innuendos, and indecent and destructive actions which consequently make his or her life at the workplace unbearable and rather abusive (Broderick Law Firm, Inc., 2008). However, the unwelcome actions need not be sexual in character for sexual harassment to occur – violent actions inflicted on an employee on account of his or her gender alone could constitute sexual harassment. For instance, a court once decided that when male workers damage certain equipment for the purpose of disrupting the work of their female co-worker because she is not one of the boys on account of her being a woman, their action amount to sexual harassment (See *McKinney v. Dole, 765 F. 2d 1129, 38 FEP Cases 364 [D. C. Cir]* as cited in Preventing Sexual Harassment: A Fact Sheet For Employees, n. d.). In *Robinson v. Jacksonville Shipyards,* 760 F. Supp. 1486, 57 FEP Cases 971, M. D. Florida, the court ruled that when women workers are the minority in a workplace, the proliferation of " sexual graffiti and pornography" within the vicinity of the company constitutes a hostile environment sexual harassment (Preventing Sexual Harassment: A Fact Sheet For Employees, n. d.).

When does a certain behavior become sexual harassment? This question has been repeatedly asked in the past. Some quarters are confused where to draw the line between the actions of people who are simply immature or those who are really ill-mannered, on one hand, and the actions of people

who are committing sexual harassment, on the other hand. This difficulty was shown by a survey who found that most men considered sexual approaches flattering (75 percent of respondents) while only 15 percent considered them insulting. In the case of the female respondents, however, a contrary result was found (majority of them considered sexual approaches in the workplace insulting). Because of this finding, a ruling has been adopted by most courts: that for a sexual harassment to occur, the behavior in question should be considered harassment in the standard of a " reasonable woman" as opposed to the standard of a " reasonable man." In other words, as long as a reasonable woman feels that an action amounts to sexual harassment, the court would likely rule accordingly even if a reasonable man thinks otherwise (Preventing Sexual Harassment: A Fact Sheet For Employees, n. d.).

One of the primary elements of sexual harassment is that the behavior in question should be " unwelcome." So that this element is satisfied, the behavior should be one that was not instigated or invited by the victim. Secondly, such behavior should be considered offensive or unwanted by the victim. The victim's perception is being given primary consideration since it is the victim who is adversely affected by such unwelcome and offensive behavior ((Integrated Publishing, n. d.). In addition to the perception of the victim, there should be an outright and explicit rejection on the part of the victim. In other words, the victim should repeatedly tell the harasser in as clear a language as possible that the action is unwelcome and should therefore be stopped immediately. The victim should avoid appearing ambiguous in his or her rejection so that the harasser would not be confused

by his or her intention. For instance, when asked for a date, a female subordinate would have to say “ No” very clearly and audibly instead of just saying “ Not tonight” or words to that effect (Preventing Sexual Harassment: A Fact Sheet For Employees, n. d.).

It is not enough that an employee who claims to have been victimized by sexual harassment state that he or she was exposed to a pervasive situation. Several factors are taken into consideration before a pervasive situation could be established, namely:

- the total physical environment of the [victim’s] work area;
- the degree and type of obscenity that filled the environment of the workplace, both before and after the [victim was] assigned to the specific workplace;
- the nature of the unwelcome sexual words or sexual gestures;
- the frequency of the offensive encounters
- the severity of the offensive encounters;
- whether the unwelcome comments or gestures were physically threatening;
- whether the offensive encounters unreasonably interfered with any [of victim’s] work performance, but subject to the admonition that [the victim] is not obligated to prove that the unwelcome comments or gestures actually interfere with [his or her] work performance; and
- whether the offensive encounters had an effect on [the victim’s] psychological well-being, but also subject to an admonition that [the victim] need not demonstrate specific psychological harm (Murphy, 2001).

The above-named factors would be evaluated in an objective manner, not subjectively as viewed from the point of view of the victim. Moreover, as earlier ruled by the court, the pervasiveness of the situation or the severity of the offensive behavior would be considered based on the standard of the “ reasonable woman.” According to the court, adopting the standard of the reasonable woman is necessary to “ protect the employer from the hypersensitive employee” (Murphy, 2001). It is recognized that women are more sensitive than men.

Sexual harassment harms both the employer and the employees. It is therefore imperative that employers make it a point to do its share in eliminating sexual harassment in their workplaces. This could be accomplished by formulating a suitable sexual harassment policy which contains the following: a statement of policy which explicitly prohibits sexual harassment in the company; a detailed and comprehensive definition of sexual harassment so that every employee from the president down to the lowest-ranked employee is properly guided; a policy guaranteeing non-retaliation against employees who report cases of sexual harassment to show the company’s absolute commitment to the prosecution of offenders; a precise guidelines for prevention; an easy to understand and enforceable procedure for reporting and resolving cases of sexual harassment (Schickman, 2008).

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