

# Sexual harassment

[Health & Medicine](#), [Sex](#)



Harassment page 1 Sexual-harassment HRM 320 Employment Law February 5, 2012 Harassment page 2 Definition of sexual harassment as the term is used legally The definition of sexual harassment that is in the guidelines of the U. S. Equal Employment Opportunity Commission (EEOC) also is copied by most states and employers for their own use. The guidelines state: Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when: submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals, or such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. (29 C. F. R. § 1604. 11 [1980]) Common sense must be used. Hugging, may be sexual or nonsexual and must be evaluated in context. There are 2 categories of Sexual harassment.

It might be physical, and include, but not limited to: kissing, hugging, pinching, patting, grabbing, blocking the victim's path, leering or staring, or standing very close to the victim. It can also be verbal, which may be oral or written and could include requests for sexual acts. (sexual harassment , 2008) Provide the legal definition of " quid pro quo" (also known as " vicarious liability") sexual harassment. In Latin, quid pro quo means, What for what or Something for something. Harassment page 3 Most people think of quid pro quo as giving one thing of value and receiving something else.

In the law, it has a similar meaning, but is a bit more complex. In regards to sexual harassment, quid pro quo is speaking about a form of sexual blackmail. Quid pro quo sexual harassment is requiring the employee to submit to unwelcome sexual conduct in order to keep their job, get a raise or receive a promotion. (quid pro quo, 2008) For example, quid pro quo can be occurring if a teacher makes your grade based on whether you submit to unwelcome sexual conduct. This abuse of authority is illegal regardless of whether you refuse sexual demands or submit to them.

Provide the legal definition of hostile environment sexual harassment. A hostile environment sexual harassment situation occurs where the sexually-oriented conduct creates an offensive and unpleasant working environment. Most legal definitions state that “ hostile work environment” refers to harassment or discrimination that is a violation of a person’s civil rights based on gender, sexual orientation, race, color, nationality, ancestry, ethnic origin, religion, physical handicap/disability, medical condition, physical appearance, marital status, veteran status, and/or education.

The United States Supreme court clarified this definition in a unanimous decision in March, 1998 the Court said: “ When the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim’s employment and create an abusive working environment, Title VII is violated. ” (Oncale v. Sundowner Offshore Services, Inc. 523 U. S. 75 (1998)) Harassment page 4 An example of hostile environment sexual-harassment would be in the case of Nichols v. Azteca Restaurant Enterprises, Inc. 56 F. 3d 864 (9th Cir. 2001), a male

employee who was gay was taunted, called names, referred to as " she" and " her" by supervisors and fellow employees. List the factors which contribute to a determination of whether behavior is sexual harassment There is no complete list of factors to consider in regards to making a determination of sexual harassment. It is possible that pertinent circumstances may need to be taken into account on a case by case basis. The following is a concise list of the top 7 factors employers should consider.

Key factors management should consider include: The nature of the conduct (physical, verbal, or both) The identity of the alleged harasser (s) (supervisor, coworker, or nonemployee); Whether the conduct was physically threatening or humiliating, or a mere offensive comment The frequency, severity and pervasiveness of the conduct The context(s) in which the conduct occurred Whether the conduct was unwelcome (uninvited by and offensive to the complaining employee) Whether the conduct unreasonably interfered with an employee's work performance. (Amaguin ) Harassment page 5

Define the standard by which " unreasonable" behavior is determined The law cannot read every ones mind. A simple test for what most average citizens would do in a particular situation needs to be used frequently to judge whether something is reasonable. This is called the Reasonable Person Standard. What would a reasonable person think is out of bounds or interferes with work in the case of harassment. If a " reasonable person" would consider the conduct sufficiently severe to create an abusive working environment, a violation of Title VII has occurred. " Harassment prevention

policies," ) Explain what situations are considered "severe or pervasive" and why these terms are important. Severe and pervasive situations in regards to harassment takes the context and case-by-case conditions into account. Courts require actionable harassment to consist of one extremely severe incident or to continue long enough to become cumulative. In *Faragher*, 524 U. S. at 788; *Alfano*, 294 F. 3d at 374; *Indent*, 164 F. 3d at 264. the court held that In order to establish a prima facie case, the harassment must either consist of an extremely severe incident or continue long enough to become severe or pervasive. A plaintiff walks a fine line if they do not report initial harassment immediately, as it may later be construed as consent. Severe and pervasive conduct or conditions must also change the terms and conditions of the employment in the mind of the victim and in the eyes of a reasonable observer. Harassment page 6 The following is a list of possible factors in determining a severe and pervasive environment:

The frequency of the discriminatory conduct; The severity of the conduct; Whether the conduct was physically threatening or humiliating; Whether it unreasonably interfered with the employee's work performance; and The context in which the harassment occurred, as well as any other relevant factor. ("Section 15: Race," 2006) Give the main legal reason why every company should have a valid written policy against sexual harassment. If a company fails to have a policy on this issue it can result not only in costly lawsuits.

In 1991, Congress amended Title VII to permit victims of sexual harassment to recover damages (including punitive damages) under federal law. The

EEOC encourages employers to " take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise, and how to raise, the issue of harassment under Title VII," (Johnson) A plaintiff in a sexual harassment lawsuit now has the right to a trial before a jury.

A successful plaintiff may recover lost wages, attorney fees, plus emotional distress and punitive damages up to \$300, 000, depending on the size of the employer's workforce. If a company has a sexual harassment policy, and an employee does not report harassment, the employee may not have a case.

Harassment page 7 The facts of the case: Meritor savings bank v. Vinson (no. 84-1979) Mechelle Vinson worked at Meritor Savings Bank. She was fired, and subsequently sued Sidney Taylor, the Vice President of the bank. Ms.

Vinson said that Taylor had pressured her to have sex with him and made these demands for sexual favors while at work. Ms. Vinson testified that Taylor had touched her in public, exposed himself to her, and forcibly raped her multiple times. The issue in the case: Meritor savings bank v. vinson The primary question presented was: " Is a hostile work environment a form of unlawful discrimination under the Civil Rights Act of 1964, or is the Act limited to " tangible economic discrimination" in the workplace? " The decision of the court: Meritor savings bank v. inson (no. 84-1979) The Court held that Title VII was " not limited to 'economic' or 'tangible' discrimination," finding that the intention of Congress was "'to strike at the entire spectrum of disparate treatment of men and women' in employment. " The Court said

that the EEOC specified that sexual harassment leading to noneconomic injury was a form of sex discrimination prohibited by Title VII. The Court recognized that plaintiffs could establish violations of the Act " by proving that discrimination based on sex has created a hostile or abusive work environment. (" Meritor savings bank," 1986). Harassment page 8 The Supreme court also found that the lower courts findings of no economic effect was in error and that they should have focused on whether respondent by her conduct indicated that the alleged sexual advances were unwelcome, not whether her participation in them was voluntary. This decision established the standards for analyzing whether conduct was unlawful and when an employer would be liable. Whether you agree or disagree with the courts decision - and why. : Meritor savings bank v. vinson (no. 4-1979) In my opinion, Ms. Vinson may have been pressured to have sex, but she made the decision to go through with the sex and did not complain at any time till after she was fired, therefore, it sounds more like she was having a consensual affair with Taylor, and when she was later fired, decided to cash in. When she was first approached by Taylor, she should have filed a complaint. When he allegedly raped her, on " mulitple occasions" she should have went to the police. No sinle job is worth what Vinson claims to have been subjected to.

Before I would stay in taht situation, I would quit and work a minimum wage job just to get away. Harassment page 9 Appendix item: Outline of a Sexual harassment policy A good Sexual harassment policy should contain several topics. The following is an outline of a good Sexual Harassment policy and why each section should be included: UNDERSTANDING SEXUAL

HARASSMENT A. Definition. 1. Sexual harassment may include jokes, vulgar language, sexual innuendos, pornographic pictures, sexual gestures, physical grabbing or pinching, and other unwelcome or offensive physical touching or contact.

B. Why understanding sexual harassment is important. 1. A company can be held liable monetarily if your employees engage in sexual harassment. 2. Any unwelcome sexual activity tied to employment decisions or benefits is sexual harassment. 3. Comprehend that employees who comply with unwelcome sexual advances can still be victims of sexual harassment. II.

COMMUNICATE POLICY A. Issue a strong policy from the CEO against sexual harassment 1. Review the policy with your employees on a regular basis 2. Discuss the policy with all new employees 3.

Ensure that third-party suppliers and customers are aware of your sexual harassment policy. B. Why communicating a strong policy is important. 1. All employees and suppliers should be aware of the companies sexual harassment policy a. Prevents some occurrences before they happen. b. Gives the company a defense if a employee later sues but never complained. c. A strong policy gives employees a guideline for what is not allowed and whom to report to. Harassment page 10 ESTABLISH PROCEDURES A. Appoint a senior corporate official to oversee the implementation of the policy B.

Train your supervisors and managers to recognize and prevent sexual harassment 1. Outline procedures to use in reporting sexual harassment 2. Provide alternative routes for filing complaints. Designate a personnel officer or other appropriate manager, rather than a direct supervisor, to receive



sexual harassment complaints 3. Keep all sexual harassment charges confidential F. Why to establish procedures. 1. A strong policy gives employees a guideline for what is not allowed and whom to report to. ENFORCE POLICY A.

Make sure employees who bring charges do not face retaliation B. Safeguard the rights of the accused C. Investigate all sexual harassment charges quickly and thoroughly D. Maintain accurate records of the investigation and the findings E. Take immediate action when sexual harassment is discovered or suspected F. Why enforcement of the policy is important. 1. A company can be held liable monetarily if your employees engage in sexual harassment. If a company doesn't enforce its own policy, the courts may find that in fact doesn't have a sexual harassment policy.

Harassment page 11 References Amaguin , R. (n. d. ). Hawaii sexual harassment law: Factors that create a hostile work environment. Retrieved from <http://www.sexualharassmentlawfirms.com/resources/sexual-harassment/sexual-harassment-basics/hawaii-hostile-work-environment.htm> DeLorenzo, k. fema, ft. mojave mesa fire department. (1998). Developing a sexual harassment hostile work environment policy. Retrieved from website: <http://www.usfa.fema.gov/pdf/efop/efo29036.pdf> EEOC, (2006). Section 15: Race & color discrimination (915. 003).

Retrieved from website: <http://www.eeoc.gov/policy/docs/race-color.html>

Harassment prevention policies and guidelines. (n. d. ). Retrieved from <http://www.spu.edu/depts/hr/supervisor/sexhar/harassmentnew.htm>

Johnson, B. (n. d. ). Preventing sexual harassment liability. Retrieved from

<https://assignbuster.com/sexual-harassment/>

<http://www.fwlaw.com/Resources/Articles/EmploymentArticles/PreventingSexualHarassmentLiability.aspx> Meritor savings bank v. vinson (no. 84-1979) . (1986, June 19).

Retrieved from [http://www.law.cornell.edu/supct/html/historics/USSC\\_CR\\_0477\\_0057\\_ZS.tml](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0477_0057_ZS.tml) 1 Oncale v.

Sundowner Offshore Services, Inc. 523 U. S. 75 (1998) quid pro quo. In

(2008). West's Encyclopedia of American Law (2 ed. ). The Gale Group, Inc.

Retrieved from <http://legal-dictionary.thefreedictionary.com/Quid-pro-quo>

Sexual harassment In (2008). West's Encyclopedia of American Law (2 ed. ).

The Gale Group, Inc. Retrieved from [http://legal-dictionary.thefreedictionary.com/sexual harassment](http://legal-dictionary.thefreedictionary.com/sexual%20harassment) 29 c. f. r. § 1604. 11 sexual harassment. In Retrieved

from <http://law.justia.com/cfr/title29/29-4.1.4.1.5.0.21.11.html>