

## PREVENTING SEXUAL HARASSMENT

Use a common-sense approach in the way you treat your co-workers. Be sensitive to how they might respond to your words and actions, even those said or done in jest. Don't participate in off-color jokes with sexual, racial or other overtones that could be discriminatory. When you see such behavior, speak up and let others know that it is offensive and possibly illegal. Use your resources...feel free to contact the Suffolk County Human Rights Commission for questions or further information.

Become aware of your organization's policy regarding sexual harassment, if there is one. If you experience sexual harassment or witness it, you should make a report to the individual designated in the internal grievance procedure. If there is no written policy or posted procedure in place, make your report to your supervisor, or contact the Human Rights Commission for advice on how to proceed. Sexual harassment is an organizational problem, and most employers want to know about it so that prompt and appropriate action can be taken to ensure that no further incidents occur. Also, you owe it to your co-workers to report any incidents, to give your employer a chance to solve the problem before others are affected.

All inquiries to the Human Rights Commission are kept strictly confidential, until such time the person involved requests that we serve the employer with a complaint, or that the Commission contact the employer by letter.



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## Sexual Harassment in the Workplace

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## Legal Overview

The legal definition of sexual harassment was published in the Equal Employment Opportunity Commission's 1981 Guidelines, and has evolved over the years through a series of court cases. Sexual harassment is a form of gender discrimination.

***Sexual Harassment consists of unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct of a sexual nature where:***

- ***Submission to such conduct is made a term or condition of a promotion, raise, or job assignment;***
- ***Submission to or rejection of such conduct is used as a factor in decisions affecting the individual's job; or***
- ***Such conduct has the purpose or effect of substantially or unreasonably interfering with an individual's job, or creating an intimidating, hostile, or offensive work environment.***

There are two types of sexual harassment:

**Quid Pro Quo:** ("Something for Something") This occurs when a person in an authoritative position puts pressure on a subordinate to go along with sexual advances—for example, by conditioning a raise or a favorable work assignment on the employee's submission.

**Hostile Environment:** Occurs when the sexual advances or other verbal or physical conduct of a sexual nature are unwelcome and create an intimidating, hostile, or offensive work environment. The harassment can be one or two "severe" incidents that affect the person's work, or can be a pattern of disturbing incidents that are so pervasive that they cause the victim to have trouble performing his or her job.

One comment, or a few over a long time period, though offensive, may not constitute a hostile environment.

# Understanding Sexual Harassment

## SEXUAL HARASSMENT FACTS

- The harasser's conduct must be unwelcome.
- The victim, as well as the harasser, can be a man or a woman. Also, the victim does not have to be someone of the opposite sex.
- The victim does not necessarily have to be the one harassed (for example, constant offensive jokes made in one's presence).
- Harassment is often in the "eye of the beholder", but the courts have implemented a "reasonable person" standard when determining if the conduct is severe and pervasive enough to constitute a hostile environment. Factors considered: the frequency of the conduct; its severity; whether it was physically threatening or humiliating, or a mere offensive utterance; whether it unreasonably interfered with work performance; the effect on the employee's psychological well-being; and whether the harasser is superior in the organization.
- Harassment that is not sexual in nature, but occurs because of a person's gender, can still constitute unlawful sex discrimination (for example, making insulting remarks about a woman's pregnancy).
- Many are reluctant to report incidents, for a variety of reasons: fear of reprisal from the harasser, embarrassment, fear that the complaint won't be taken seriously, feeling that they should be able to handle the problem themselves, or being unaware of the internal complaint procedure.

## EXAMPLES OF SEXUAL HARASSMENT

### **Verbal:**

Whistling, cat calls, kissing sounds, sexual comments about appearance, telling jokes or sexual stories, asking someone about sexual history or fantasies, repeatedly asking someone out who is clearly not interested, repeated and unwanted phone calls, letters, or emails, spreading lies about a person's sex life

### **Nonverbal:**

Looking a person up and down, blocking someone's path, following, stalking, suggestive notes or emails, displaying sexually suggestive visuals, facial expressions such as winking or licking lips, gifts of a personal nature (such as undergarments)

### **Physical:**

Massaging neck or shoulders, touching a person's clothing, hair, or body, standing very close, touching or rubbing oneself sexually in view of another person, brushing up against a person, hugging, kissing, patting, putting arms around another person, touching or grabbing a person in a sexual manner

*Some physical acts may also constitute a crime, and should also be reported to the police.*

## COMMON PROBLEMS AFTER OBJECTING TO SEXUAL HARASSMENT

- Sudden criticism of job performance
- Denial of assignments or overtime
- Additional or more dangerous duties assigned
- Sudden written warnings for "insubordination"
- Sudden pressure to quit the job
- Inaccurate evaluation of job performance
- Demotion or denial of a promotion

## RETALIATION PROHIBITION

All employees have a responsibility to cooperate fully with the investigation of a sexual harassment or discrimination complaint. There can be no retaliation against anyone for making a complaint, for helping someone else complain, or for acting as a witness. Company policies prohibiting discrimination often protect employees who honestly participate in the internal grievance process, and both state and federal law prohibit retaliation against those involved in investigations by outside agencies. If you are accused of sexual harassment, even if you believe it is an unfair accusation, you are not to retaliate against the person who complained or anyone who participates in the investigation. You must treat them in the same fair and even-handed manner as if no complaint was made. Failure to do so could lead to disciplinary action or further legal charges against you, even if the investigation ultimately shows that no sexual harassment or discrimination occurred.

## RECOURSE FOR VICTIMS

### **Internal Grievance Procedure**

In most instances, it is the victim's responsibility to report the harassment to the employer and give them an opportunity to resolve the situation. Failure to do so may shield the employer from legal liability.

*Please note, however, that filing an internal complaint does not affect the statute of limitations for filing with the EEOC, the State Division of Human Rights, or State Court, as explained below.*

### **Other Possible Actions**

If the employer has four or more employees, an individual can file a complaint with the NY State Division of Human Rights (within one year of the alleged incident) or directly in State Court (within three years of the incident).



NY State Division of Human Rights  
Long Island Regional Office  
(516) 538-1360

A federal claim may also be filed with the Equal Employment Opportunity Commission (the EEOC) within 300 days of the alleged incident, if the employer has 15 or more employees. A person must first file with the EEOC as a pre-requisite for suing in federal court under Title VII.

EEOC - (800) 669-4000 or (212) 748-8500

### **NOTE:**

*If the discrimination took place within Suffolk County, you may contact the **Suffolk County Human Rights Commission** to file a complaint. Both NY State complaints and EEOC charges can be processed locally, through the Suffolk County Human Rights Commission, within the timeframes stated above. The Commission can also provide confidential information and advice on the complaint process. Please telephone the Commission to speak to an investigator if you have any questions.*

**(631) 853-5480**

## WHAT TO DO IF YOU ARE A VICTIM

Don't ignore the situation...it won't go away! Be clear with the harasser that the behavior you are being subjected to is unwelcome. Tell the harasser directly that his or her behavior makes you uncomfortable. Keep a log of dates, incidents, and witnesses. Keep evidence such as notes or emails. Retain evidence of good work performance, and keep records on how the harassment is affecting your ability to do your job. Ask co-workers if they have had similar experiences. **REPORT INCIDENTS AS SOON AS POSSIBLE!** If you are not a victim yourself, but you are aware of someone who is, report it to your supervisor. Taking appropriate action in a timely manner can go far in preventing negative work experiences, and in preventing outside agency investigations, court cases, company liability, and in some instances, personal liability.