



WORKPLACE JUSTICE

## FREQUENTLY ASKED QUESTIONS ABOUT SEXUAL HARASSMENT IN THE WORKPLACE

### 1. What is sexual harassment?

Sexual harassment is a form of sex discrimination. As a result, when it occurs on the job it violates the laws against sex discrimination in the workplace, including Title VII of the Civil Rights Act of 1964. Title VII prohibits all employers with 15 or more employees from discriminating on the basis of sex. If you work for an employer with fewer than 15 employees, you may have protections under state or local law.

Sexual harassment is unwelcome behavior that happens to you because of your sex. But for your sex, you would not have been targeted.

It includes:

- Unwelcome sexual advances
- Request for sexual favors, or
- Hostile verbal or physical conduct that targets someone based on gender, whether or not sexual overtures are involved.

Sexual harassment occurs when:

- A person's submission to or rejection of sexual advances is used as the basis for employment decisions about him or her, or submission to sexual advances is made a condition of his or her employment (*quid pro quo* harassment), or
- Sexual conduct or gender-based hostility is sufficiently severe or pervasive that it creates an intimidating, hostile, or offensive work environment (*hostile work environment* harassment).

### 2. Does sexual harassment have to involve sex?

No. Harassment does not have to involve any physical contact at all — words alone may be enough. Conduct that is sexual in nature but does not include any sexual contact is still sexual harassment. Behavior that is “sexual in nature” includes most situations people think of when they think of sexual harassment: sexual advances, repeated requests for dates, lewd remarks, pornographic pictures, or sexual jokes. Of course, harassment can also include physical contact—and conduct that includes unwanted sexual touching, sexual assault or rape is not only illegal sexual harassment, but is also a crime.

### 3. What if the harassment is not sexual in nature, but is still directed at me because I am a woman?

Non-sexual conduct is still unlawful if it is severe and pervasive and singles you out because of your gender. For example, if your supervisor says he doesn't think a woman should have your job and deliberately insults or ridicules you or gives you impossible tasks because you are a woman, that is harassment. It is also harassment when your employer insults you because you are not conforming to the employer's stereotypes about how it is appropriate for women to behave.

### 4. Is it possible to be sexually harassed by someone who is the same sex as I am?

Yes. Males can sexually harass males, and females can sexually harass females. The key question the law asks is whether the conduct itself would have occurred if the victim had been of a different sex.

### 5. If I am being harassed because I am a lesbian or because I am transgender, is that illegal?

Yes, according to the federal Equal Employment Opportunity Commission (EEOC), which enforces Title VII. Some courts have held this as well; this is still an evolving area of the law. In addition some states explicitly prohibit discrimination on



the basis of sexual orientation or gender identity, including workplace harassment on these bases.

## **6. Is it possible to be harassed by someone who is not my supervisor?**

Yes. The harasser does not have to be your supervisor for the harassment to be illegal. Employers have a responsibility to provide a workplace free from sexual harassment, whether the harasser is your supervisor, a supervisor in another department, a co-worker, a subordinate, or even a customer or client.

## **7. What should I do if I believe that I am being sexually harassed at work?**

Inform the harasser that you want the unwelcome behavior to stop, unless you fear that doing so will jeopardize your physical safety or your job. Direct communication with the harasser is often more effective than merely ignoring the behavior. Make it clear what behavior you object to and ask that it stop. If verbal requests are not effective, consider writing the harasser a memo asking him or her to stop. You can also tell someone else in a position of authority whom you trust.

Review your employer's sexual harassment policy and procedure for making complaints about sexual harassment. You should use this procedure to promptly report any incidents of harassment. If you are part of a union, you can contact your union representative and ask about grievance procedures under your contract. Going through these internal procedures may not be enough to stop the harassment, but if you unreasonably fail to take advantage of any preventive or corrective opportunities provided by your employer, your employer may be able to avoid legal liability for the harassment, depending on the circumstances. While sometimes individuals who complain of sexual harassment experience retaliation from their employers, it is important to know that such retaliation is unlawful (as discussed more below). Employers should also treat the complaint process as confidential, though the harasser and potential witnesses will have to be contacted in an investigation.

It is also a good idea to document the harassment and your work performance, as well as any incidents of retaliation you might experience when you report the harassment.

- Keep a journal of the harassment. Make a written record describing each incident of harassment, including what happened, where, on what date, and who else was present. Do this as soon as possible after the incident, and note the date and time you are writing it down. Keep updating the journal as new incidents occur. In some cases employers

have destroyed journals left at work, so keep it at home or on a personal home computer or device. This written record can be important evidence in later internal investigations or legal actions.

- Keep copies of any offensive notes, pictures, social media posts, voicemails, text messages and other any notes or documents that relate to the harassment.
- Keep copies of your work records, including copies of your performance evaluations and any memoranda or letters documenting the quality of your work. A harasser may try to defend him- or herself by attacking your job performance.
- Network with others. If you can, talk to others at work about what you are experiencing. You may find witnesses, allies, or others that have been harassed by the same person or are concerned and would be willing to help.
- Tell supportive friends, family members, and colleagues about the harassment. Telling others about the harassment not only can give you much needed support, but it can also be important evidence later.

If these steps do not end the harassment, or result in retaliation, you may want to consider taking legal action.

## **8. What can I expect if I internally report the harassment?**

Internal procedures differ in individual companies, but these are some generalities:

You can expect your employer to promptly investigate your claim. It is illegal for employers to retaliate against employees for bringing or participating in complaints, so you should cooperate with any investigation. The investigator will need to know all the details of the harassment, however hard or embarrassing they may be to reveal, including information such as the names of any potential witnesses or other victims of the same harasser, a chronology of what happened and when, specific descriptions of the offensive conduct, and any reasons why you delayed reporting the harassment (if you did). You may have to continue working with the harasser during the investigation.

You should also expect your employer to take action to address the harassment if, based on the investigation, it determines that sexual harassment or some other inappropriate behavior did occur. Disciplinary action for the harasser might include oral or written warnings, deferral of a raise or promotion, demotion or reassignment, suspension, or discharge. Your employer might also require counseling for the harasser. Be aware that just because an employer



disciplines the harasser, that does not necessarily mean that the conduct is severe enough to legally qualify as sexual harassment.

## 9. Can my employer punish me for complaining about sexual harassment?

No. If an employer retaliates against you for bringing harassment to the attention of management or in response to your filing a complaint, that is against the law and is a separate violation of Title VII, in addition to the harassment itself. If you have an attorney, be sure to discuss the retaliation with him or her, and if you are filing a complaint or grievance, be sure to include any retaliatory actions.

## 10. What kind of injury do I have to suffer before I have a legal claim for sexual harassment?

You do not have to be fired, demoted, or suffer any economic, physical, or psychological harm before you can bring a claim for sexual harassment. Having to endure sexual harassment at your job is injury enough – it is discrimination and it is illegal.

## 11. When is my employer legally responsible for the sexual harassment committed by its employees?

An employer is always legally responsible if the harasser was your supervisor—the person with authority to hire you, fire you, cut your pay, etc.—and based decisions about your job on whether or not you acquiesced to sexual advances. The fact that the highest managers of the company did not know about the harassment does not make the company any less responsible.

If your supervisor created a hostile work environment, the company is also responsible, unless the company took care to prevent and correct harassment, and you unreasonably failed to use the procedures offered by the company to address harassment. This defense is why it's important for you to use your employer's internal procedures as a first step toward ending the harassment.

If the harasser is a co-worker or someone else, like a client or customer, your employer may be liable, but its responsibility is not automatic. It is liable only if management knew about the harassment or should have known about it and did not take immediate and appropriate corrective action. This standard also applies to harassment by lower-level supervisors who have the authority to direct daily work activities (like determining work schedules and day to day work assignments), but not the authority to hire, fire, set pay, make promotions or demotions, reassign to significantly different work responsibilities, or take similar actions.

## 12. If I want to file a legal complaint, what do I need to do and what can I expect?

The first step in bringing a legal complaint of sexual harassment under Title VII is filing a charge of discrimination with the EEOC, which has offices throughout the country. To be connected with the nearest EEOC regional or field office, call 1-800-669-4000 or visit <https://www.eeoc.gov/field/index.cfm>. You **must** file a charge of discrimination with the EEOC and obtain a “right to sue” letter from the agency before you can file a Title VII lawsuit. There are also state and local laws against sex discrimination, and state and local agencies with authority to enforce them; they differ in their requirements.

There are important time limits that apply to sexual harassment claims. If you are relying on Title VII, you have 180 days, or six months, from the date of the last incident of harassment to file a complaint with the EEOC or **your state agency**. There are some exceptions to this time limit: in some states, the time limit is 300 days if that state has state or local laws prohibiting discrimination on the same basis as Title VII. Using internal company procedures does not extend the time limit under federal law, although it may under some state laws. If you are relying on Title VII, contact your **EEOC field office** to find out the correct time limit that applies to you. If you are relying on state law, contact **your state agency**.

***If you are an employee of a federal, state or local government agency, please see the different filing deadlines and procedures outlined below.\****

You do not need an attorney to file a complaint with the EEOC, although a lawyer's assistance may be helpful. It is best to file any complaints promptly, because if charges are filed beyond the applicable time limits, you may not be able to obtain any legal remedy to the harassment. The complaint can be in the form of a letter and does not have to be in legal language.

Once a complaint is filed with the EEOC, this is generally how it will be handled:

**Investigation.** The EEOC or state agency will interview witnesses and collect evidence relating to your complaint. If you have already been through an internal investigation at your company, some of this may be repetitious. If you request confidentiality, the EEOC will keep your identity secret, though most state agencies will not.

**Determination.** After the investigation, the agency will decide whether there is reasonable cause to believe you have been illegally harassed. If it decides that there is reasonable cause, it will issue a finding that there is reason to believe that discrimination occurred and will invite you and your employer



to attempt to informally settle the case through conciliation. If you do not want to conciliate the case, the next step is a lawsuit. If you do participate in conciliation and the EEOC cannot reach an acceptable settlement, it may decide to file suit on your behalf, although that is unusual. More commonly, the agency will issue you a “right to sue” letter, allowing you to bring your own lawsuit.

If the agency decides that there is not reasonable cause to believe discrimination occurred, it will issue a “no cause” finding with a “right to sue” letter, which means the investigation did not find enough evidence to believe that you can prove a case of illegal harassment. You may appeal a “no cause” finding, or you may file a lawsuit in court. Receiving a “no cause” determination does not mean that you have not been sexually harassed; many individuals have won in court after receiving a no-cause finding from the EEOC or state agency.

*Getting your “right to sue” letter without waiting for a determination.* Although a determination by the agency is supposed to be issued within 180 days after you file your claim, many such offices have a backlog of complaints and take much, much longer to complete an investigation and issue a determination. If you want to file a suit, 180 days or more after you have filed your complaint you may ask the agency to issue you a “right to sue” letter, which stops the investigation and allows you to go straight to court.

*Going to court.* Once you have received a “right to sue” letter, you have the right to file a Title VII lawsuit in court. You must file your lawsuit within 90 days of receiving your “right to sue” letter. If you have not yet found an attorney and are nearing the end of the 90-day period, you may want to file a complaint yourself (this is called a “pro se” filing) and continue your search for an attorney. If you continue to be unable to find one, you may want to ask the court to appoint an attorney for you; in some instance a court will do so.

**\*If you are an employee of a government agency, different time limits and procedures apply.**

- An **employee of a federal government agency** must first contact the agency’s EEO counselor within 45 days of the date the harassment occurred. The EEO counselor will try to resolve the complaint through counseling or mediation. If the complaint is not resolved, the EEO counselor will then give you notice about how to file a formal complaint. If you decide to file a formal discrimination complaint against the agency, you must do so with the agency’s EEO office within 15 days from the day you receive notice. The agency has 180 days from the day you filed the complaint to review the complaint and conduct an investigation. When it completes

the investigation, the agency will issue a notice allowing you to either request a hearing before an EEOC Administrative Judge, or to request that the agency issue a determination as to whether discrimination occurred. If the agency finds no discrimination occurred, or if you disagree with the decision, you can appeal the decision to the EEOC or file a lawsuit in federal court.

- If you are an employee of a **state or local government agency** and want to make a complaint of sexual harassment under Title VII, you must file a complaint with the EEOC. Generally the agency is covered by Title VII if it has 15 or more employees who worked for the agency for at least twenty calendar weeks (in this year or the previous one). If the agency employer is not covered by Title VII, it may be covered by a state or local antidiscrimination law. Check with the EEOC about the filing deadline that applies in your case. The EEOC will review and investigate the charge, and try to resolve it. If the EEOC determines the charge has merit, but is unable to obtain a resolution, the EEOC may refer your charge to the U.S. Department of Justice, Civil Rights Division, which enforces Title VII against state and local government employees. The Civil Rights Division may decide to bring a lawsuit against the employer based on the charge.

### **13. Do I need an attorney?**

You may want to consult with an attorney before filing an EEOC charge and definitely should try to do so upon receiving a “right to sue” letter in order to determine whether you want to go to court. You should keep in mind that legal actions may not be the perfect solution to sexual harassment. Finding an attorney may be difficult, especially if you need to hire the attorney on a contingency fee basis, meaning that the attorney only gets paid if you win the case and recover money from your employer. Lawsuits are also time-consuming, expensive, and often emotionally difficult. But if you are unable to obtain relief by confronting the harasser or pursuing internal procedures, taking legal action may be your best recourse. Although it is not necessary to have an attorney in order to bring a legal claim, it is extremely helpful. Be persistent when trying to find an attorney.

### **Disclaimer:**

This report does not constitute legal advice; individuals and organizations considering legal action should consult with their own legal counsel before deciding on a course of action.

