

# Employee Responsibility for Preventing Sexual Harassment

If you find gender-based or sexually oriented conduct offensive, you should make your displeasure clearly and promptly known. Remember that some offenders may be unaware of how their actions are being perceived. Others may be insensitive to the reactions of fellow workers. Tell the harasser that the behavior is not acceptable and is unwelcomed by you. At the very least, refuse to participate in such behavior.

Even if you do not find such conduct personally offensive, remember that some of your co-workers might, and avoid behavior that is in any way demeaning to members of the opposite sex. In determining if your own conduct might be unwelcome, ask yourself:

“Would my behavior change if someone from my family was in the room or would I want someone from my family to be treated this way?”

You and your employer each have a stake in maintaining a harassment-free work environment. Many companies have written policies, distributed to all employees, that contain examples of prohibited conduct and describe procedures for handling complaints. Learn about your company’s policy.

Retaliation against any employee who reports sexual harassment or who cooperates when the company investigates a claim of sexual harassment is prohibited. The company will want to conduct a prompt and thorough investigation of all complaints and matters will be kept as confidential as possible.

Company policies typically provide that any employee found to have committed sexual harassment will be subject to discipline, up to and including immediate discharge, and that the complaining employee will be told whether the action has been taken.

## **Respond Appropriately When You Encounter Sexual Harassment**

If you experience sexual harassment or witness it, you should make a report to the appropriate company official. You do not have to report the incident to your supervisor first, especially if that is the person doing the harassing.

Before you report a problem, you might want to try some self-help techniques, using the Dos and Don'ts listed in the document: "Preventing Sexual Harassment: Dos and Don'ts."

If you do follow these self-help suggestions, remember that sexual harassment is a company problem and the company wants to know about it so it can take prompt and appropriate action to ensure that no further incidents occur either to the present victim or to other employees in the future. Report incidents immediately, especially if they are recurring.

### **Participation in an Investigation**

All employees have a responsibility to cooperate fully with the investigation of a sexual harassment complaint. Investigations will vary from case to case, depending on a variety of circumstances. While not every investigation will follow the same format, in every case you need to keep certain things in mind.

***Keep it confidential.*** First, whether you are the accused employee, the complaining one, or merely a potential witness, bear in mind that confidentiality is crucial. Two people have their reputations on the line and you may or may not know all the facts. The company will keep the information it gathers as confidential as possible, consistent with state and federal laws and both the accused and the alleged victim will be given a fair chance to present their cases.

***Don't be afraid to cooperate.*** There can be no retaliation against anyone for complaining about sexual harassment, for helping someone else complain, or for providing information regarding a complaint. Title VII protects employees who participate in any way in EEOC complaints, state laws [DFEH] have similar protections, and company policies protect employees who honestly participate in in-house investigations. If you are afraid to cooperate, you should be very frank about your concerns when talking to the company investigator.

### ***Answer the questions completely***

*As the complainant* - if you are the person making the complaint, the investigator will need to know all the details, even though some of them may be unpleasant. The company investigator has a duty to be fair to everyone involved and needs as much information as possible to make the right recommendation. Please be prepared to give the investigator the following information:

- the names of everyone who might have seen or heard about the offensive conduct;
- the names of everyone who may have had a similar experience with the alleged harasser;
- a chronology of the incidents - when and where each incident occurred;

- your thoughts on what the company should do to correct the problem and maintain a harassment-free environment.

The investigator may need to talk with you several times as other employees are questioned and information is gathered.

*As the accused* - if you are the person accused of sexual harassment, you must remember that you have a duty to cooperate in the investigation, regardless of whether you believe the allegations to be true or false. You will be expected to answer questions completely and honestly.

You may be asked not to communicate with certain individuals during the course of the investigation. You must remember that you are not to retaliate against the person who made the complaint or against anyone who participates in any way in the investigation.

Failure to abide by these rules may result in discipline against you, even if the investigation shows that no sexual harassment occurred.

You may be asked to confirm or deny each of the specific allegations made against you. It is possible that the allegations are gross exaggerations or downright lies. It is important to remain calm and keep your responses factual. You may be asked to provide any facts that might explain why the complainant would be motivated to exaggerate or fabricate the charges. The investigator might need to talk to you several times as other employees are questioned and information is gathered.

*As a potential witness* - you may be asked to provide details concerning alleged sexual harassment that occurred between two other employees. You have a duty to respond truthfully to the questions concerning these allegations.

The natural tendency after an interview by an investigator is to share with co-workers the more interesting details. Remember that company policy is to keep the interviews of everyone as confidential as possible. Gossip about allegations, particularly allegations of sexual misconduct, can unfairly damage the reputation of your co-workers.

*Keep the lines of communication open.* The object of the company's investigation is to find out what happened. The investigator may conclude that sexual harassment occurred, that it did not occur, or that it is impossible to tell what really happened.

As the person who made the complaint or as the person accused, you have the right to know in general terms what the company's conclusion is and you should ask if you are not told. Do not assume that the matter is settled until you have been told directly.

If you are the complaining party, it is important to report promptly any new incidents of sexual harassment that occur after your first talk with the investigator and to tell the investigator about anything you may

have forgotten or overlooked. Do not be discouraged by the fact that the company takes time to act and bear in mind that the more information you provide, the better chance there is for decisive action by the company.

If you are the accused, do not be discouraged if the company's investigation fails to completely clear your name. It is not uncommon for an investigator to conclude that there is no way to tell what really happened. Remember, sexual harassment complaints often involve one-on-one situations in which it is difficult to determine where the truth lies. Moreover, two people can have totally different perceptions of the same incident. The best you can do in such a situation is to have a frank discussion with the complaining party, perhaps in the presence of a company representative, and to avoid future situation in which your words or conduct can be used as evidence of sex discrimination.

*Expect adequate remedial actions.* If the company finds that sexual harassment did occur, expect it to take some remedial action. A variety of disciplinary measures may be used, including:

- an oral or written warning;
- deferral of a raise or promotion;
- a demotion;
- a suspension; or
- discharge.

The action taken in any particular case is within the company's [the state's] discretion. The aim of the action is to make sure that future harassment does not occur. If you, as the complaining party, feel that the harasser is retaliating against you for complaining or is continuing to harass you, you should immediately use the company [state] procedures to report the conduct so that the company [state] can take whatever further action it deems appropriate.

If the company [state] does not have enough evidence to find harassment, it still might take other actions, such as transferring the complainant or alleged harasser to another job, holding training sessions on preventing sexual harassment, or having the affected employees certify that they have read again and fully understand the company's [state's] policy against sexual harassment.

## **Understanding Sexual Harassment**

After having read this fact sheet, you should have a pretty good understanding of what sexual harassment is, how to prevent it, and what to do if you see it.

**Q** Isn't sexual harassment limited to situations where supervisors make sexual demands on subordinates?

**A** No. sexual power plays by supervisors constitute the most widely publicized and easily understood form of sexual harassment, but harassment also occurs when supervisors, co-workers, or even nonemployees create a hostile environment through unwelcome sexual advances, demeaning gender-based conduct. Or even sexual conduct that is not directed at particular individuals.

**Q** Can sexual harassment occur in the absence of physical touching or where there has been no threat to the employee's job?

**A** Yes. The nature of sexual harassment may be purely verbal or visual (pornographic photos or graffiti on workplace walls, for example), and it does not have to involve any job loss. Gender-based conduct that results in psychological impact alone may amount to sexual harassment.

**Q** Don't men have a right to free speech? Can't they express their view that women belong in the kitchen, not the shop?

**A** The First Amendment protects some forms of expression, even in the workplace, but the verbal threats involved in sexual harassment are not protected as free speech any more than coercive verbal threats are. Your rights stop where a co-worker's begin. Speech, pictures, or conduct that offends and intimidates other employees to the point that their work is affected creates a sexually hostile environment. Company policies and state and federal laws prohibit such behavior.

**Q** Is sexual harassment of men, either by a woman or by a male homosexual, unlawful?

**A** Yes. Although sexual harassment generally is perpetrated by men against women, any form of unwelcome sexual advance against employees of either gender may be the basis for a case of unlawful sexual harassment.

**Q**I'm so mad at the person who harassed me and at this company that I just want to sue. Should I even bother making a complaint under my employer's sexual harassment policy?

**A**Yes. You owe it to the company and to your co-workers to make a complaint through company channels so that the company has a chance to solve its own problems.

Making a prompt internal complaint is also something that you owe to yourself, even if your sole concern is a lawsuit against your employer. If you fail to use internal complaint procedures, the company's defense team will be sure to use that fact against you. Failing to use the company's policy at the time the alleged harassment occurred may create the appearance that the conduct complained of never occurred or that it was welcome. Failure to make a complaint also undermines any argument that the company was responsible for the harassment.

Failing to make a complaint can be particularly harmful to your legal interests if you are claiming that the harassment forced you to quit. It might be hard to blame the company for forcing you off the job if it could have corrected the conduct but was never given the opportunity to do so.

**Q**Can individuals be legally liable for harassment, or is it just employers?

**A**Individual liability is the typical result, not the exception, in court. Individual supervisors may be liable not only for perpetrating harassment, but for failing to prevent it and for failing to correct it. For a responsible supervisor or manager, it is not simply a matter of "keeping one's hands to one-self," but also a matter of "not sitting on one's hands." While employers often may decide to provide a legal defense for supervisors in a lawsuit, either jointly or through a separate lawyer, an employer may be entitled, after a court decision against it, to recover damages and legal expenses from a supervisor whose conduct created the problem.