

Preventing Sexual Harassment Q & A

SkillBrief

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.