

Session 11 -- Sexual Harassment in the Workplace Handout

One major reason women quit nontraditional occupations is sexual harassment and discrimination¹. Sexual harassment isn't just a problem for those targeted by it; it also costs employers and unions through lower morale, absenteeism, turnover, reduced productivity and lawsuits.² But employers can reduce the incidence of harassment in your program by taking a proactive approach.

The following is from the U.S. Equal Employment Opportunity Commission³

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. Title VII applies to employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government. Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a coworker or a nonemployee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

It is helpful for the victim to inform the harasser directly that the conduct is unwelcome and must stop. The victim should use any employer complaint mechanism or grievance system available.

When investigating allegations of sexual harassment, EEOC looks at the whole record: the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. A determination on the allegations is made from the facts on a case-by-case basis.

Prevention is the best tool to eliminate sexual harassment in the workplace. Employers are encouraged to take steps necessary to prevent sexual harassment from occurring. They should clearly communicate

to employees that sexual harassment will not be tolerated. They can do so by providing sexual harassment training to their employees and by establishing an effective complaint or grievance process and taking immediate and appropriate action when an employee complains.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on sex or for filing a discrimination charge, testifying or participating in any way in an investigation, proceeding or litigation under Title VII.

Statistics

In Fiscal Year 2008, EEOC received 13,867 charges of sexual harassment, 15.9% of those charges were filed by males. EEOC resolved 11,731 sexual harassment charges in FY 2008 and recovered \$47.4 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

You can learn more about Title VII and EEOC policy by calling them at 1-800-669-4000.

If you have a TTY device for hearing impaired: TTY number is 1-800-669-6820. On the Internet go to: http://www.eeoc.gov/types/sexual_harassment.html

Examples of Sexually Harassing Behaviors

The behaviors listed below are examples of some of the behaviors that can constitute sexual harassment. Sexual harassment occurs if the behavior is sexual and unwanted, if an individual's employment position is dependent on submitting to or accepting the behavior or if it contributes to an offensive, hostile or uncomfortable work environment. These behaviors are unacceptable, and should not be present in the formal, informal, onsite or offsite work environment:

- Sexual jokes, innuendos and gestures
- Unsolicited and unwelcome flirtations, advances or propositions, however subtle
- Graphic or degrading comments about someone's appearance, dress or body
- Staring at an individual or focusing upon a particular area of the body
- Elevator eyes; looking someone up and down
- Whistling, cat calls and leering
- Terms of address such as "honey," "baby," "chick," "hunk," or "dear"
- Regularly offering personal gifts such as flowers, candy, etc.
- Display of sexually suggestive objects or pictures
- Sexual or intrusive questions about an individual's personal life
- Explicit descriptions of the harasser's own sexual experiences
- Neck or shoulder massages
- Pressure (however subtle) for sexual activity
- Explicit offers of sex for grades, money or other rewards
- Any unnecessary, unwanted physical contact such as touching, rubbing, hugging, pinching, patting or kissing

- Physical or sexual assault, including rape

Facts About Sexual Harassment

Sexual harassment can occur in a variety of circumstances, which include but are not limited to the following:

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- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim. • The harasser's conduct must be unwelcome.

Employees' Role in the Prevention of Sexual Harassment in the Workplace

Copies company/agency sexual harassment policy should be posted and made available within the Human Resources Division or EEO Division. Agencies should have the name and number of someone you can contact in case you are being sexually harassed. Follow the guidelines of your employer's sexual harassment policy.

- Tell the person firmly, you find their behavior objectionable.
- Tell your supervisor. If your supervisor is the harasser, don't fear losing your job, tell his manager. Remember, the law states that your employer is liable.
- Keep a detailed log of the offensive behavior.

Supervisors'/Managers' Role in the Prevention of Sexual Harassment in the Workplace

- Notify all subordinates of the sexual harassment policy.
- Establish and maintain a work atmosphere which is free of such harassment.
- Conduct sexual harassment training for all managers, supervisors and employees.
- Cooperate with the Equal Opportunity Division (EOD) to eliminate sexual harassment.
- Inform the aggrieved persons of the right to contact their EEO Officer and/ or the EOD for assistance.
- Participate in the investigation and resolution of sexual harassment by:
 - Maintaining adequate documentation on each investigation
 - Providing timely and complete notification to appropriate persons on the disposition of each investigation.

Liability

Agency/Employer

Employers are always potentially liable for supervisor's sexual misconduct toward an employee. An employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediate (or successively higher) authority over the employee. When no tangible employment action is taken, a defending employer may raise an affirmative defense to liability or damages, subject to proof by a preponderance of the evidence. To succeed in such a defense, employers would have to show they "exercised reasonable care to prevent or correct promptly any sexually harassing behavior" and that the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

Non-Employees

Sexual harassment can also come from outside of the organization. Paragraph (e) of the federal guidelines establishes the right of employees to be protected from harassment by nonemployees. Employers are responsible for any acts of sexual harassment perpetrated by nonemployee while conducting business in the employer's work environment if the employer is aware of the harassment and does not take measures to correct the conduct.

Discrimination Complaint Procedure

The first step of any effort to prevent sexual harassment is to make sure that all apprentices and instructors, both men and women, understand what sexual harassment is. Sexual harassment is particularly serious in the trades because the workplaces are often dangerous.⁴

It must also be clear that sexual harassment will not be tolerated. Every workplace is wise to have a written policy on sexual harassment. This policy should outline what constitutes sexual harassment, how and to whom sexual harassment should be reported, and the procedure that will be used to investigate grievances. The policy should also explain the disciplinary action that may be taken against anyone who is found to have committed sexual harassment.⁵

Training in Sexual Harassment Prevention

However, merely having a policy is not enough. A survey of tradeswomen in California found that more than 40% did not understand how to file a sexual harassment grievance. Of the women who did understand the process and who had used it, many felt that their grievances were not handled properly.⁶

Employers must make sure that everyone who participates in the program, supervisory personnel, instructors, and apprentices, understands the sexual harassment policy and what is expected of them. Employers should post the information on the company/agency website and make sure everyone is regularly trained on the sexual harassment policy.⁷

Because the responsibility to create a harassment-free workplace rests on them, supervisors should receive additional training. This training should include reviewing sexual harassment law, the particular organization's policy and exercises to build problem-solving skills.⁸

Finally, to see if the organization needs to take additional steps to prevent sexual harassment, employers should conduct anonymous surveys of apprentices and instructors about sexual harassment.⁹

Discrimination

Apprenticeship programs should also train all instructors and coordinators on discrimination. Unequal treatment of certain apprentices can lead to costly lawsuits. Female apprentices often report that they are disproportionately assigned the "dirtiest and heaviest assignments," while skilled work is assigned to male apprentices.¹⁰

Instructors should be made aware of any unconscious stereotypes they hold and should call on apprentices in an equitable manner, both in quantity and tone.¹¹

References

- 1, 6, 10, California Apprenticeship Council, <http://www.dir.ca.gov/cac/cac.html>
- 11 Pennsylvania Department of Education
- 2, 5, 7, 8, 9 Wider Opportunities for Women, Workplace Solutions
- 3 U.S. EEOC, accessed at http://www.eeoc.gov/types/sexual_harassment.html
- 4 Ohio Civil Rights Commission, accessed at http://das.ohio.gov/eod/AEE0_WhatIs.htm

All information in this handout taken by permission from [A Toolkit for Recruiting and Retaining Women in NonTraditional Positions](#). Hard Hatted Women and Center for Energy Workforce Development, July 2009

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