

# Sexual Harassment Awareness Part II: Best Practices



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# Today's Agenda

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- Define Sexual Harassment
- Examples of Sexual Harassment
- Policy Language and Reporting Procedures
- Supervisor Responsibilities

# Sexual Harassment Headlines

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- New headlines and accusations each day
- More employees are aware of sexual harassment and feel more comfortable making complaint
- Increased scrutiny on employers for handling complaints properly
- Employers have to think about how to deal with complaints against executives

# Sexual Harassment

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- Sexual harassment is illegal under Title VII of The Civil Rights Act of 1964
  - Applies to most employers with 15 or more employees
- Most states also have laws prohibiting sexual harassment
  - Arizona
  - Arkansas
  - Colorado
  - Kansas
  - Louisiana
  - Oklahoma
  - New Mexico
  - Texas



# Sexual Harassment Defined

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- Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment.
  - Unreasonably interferes with an individual's work performance
  - Creates an intimidating, hostile, or offensive work environment
  - Affects an individual's employment
- **Two types of sexual harassment**
  - Quid Pro Quo
  - Hostile work environment
- Sexual harassment need not be sexual in nature; may include comments or jokes about a person's gender, sexual orientation, etc.

# “Quid Pro Quo” Harassment

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- “This for that”
- Obvious in nature
- Occurs between Supervisor and Employee
- Involves a tangible employment action
  - Promotion or demotion, change in schedule, access to work shifts, etc.
- Harassment is illegal when it is used as the basis for employment decisions

# Hostile Work Environment Harassment

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- Unwelcome conduct
- Interferes with a person's ability to work
- Extreme or pervasive
- Usually occurs more than once, however a one-time incident may be severe enough to constitute sexual harassment
- Based on victim's perception
  - Reasonable person standard
  - Intent vs. impact



# Examples of Hostile Environment

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- Constant comments, jokes, touching
- Displaying pictures or articles that may be derogatory or offensive
- Sexually explicit jokes or emails



# When and Where Sexual Harassment Occurs

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- ANYWHERE!
- A third party witness can file sexual harassment charges if he/she sees or overhears something that is offensive; even if not the intended recipient
- Sexual harassment by a third party can occur; involving clients/customers, vendors, contractors, etc. on work premises
- Technology in workplace means harassment can occur over text, email, and social media
- Office parties and social gatherings

# Case Studies

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## HOW WOULD YOU REACT?



# Questions to Consider

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- How severe is the conduct?
- Is the conduct welcome or unwelcome?
- Who else might the conduct be affecting?
- Would a reasonable person consider the conduct intimidating, hostile or offensive?
- What would you do?
- How would you react if you encountered this conduct?

# 1- Discussing the Future

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Mike hired Sue straight out of college. He's always been very attentive, commenting on her appearance and telling her how nice her body is. One day, Mike calls Sue into his office and tells her he'd like to go out for drinks after work to discuss a possible promotion. Sue is excited about the possible promotion, but politely declines. She tells Mike she'd like to keep their relationship professional.

# 1- Discussing the Future (cont.)

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- Almost immediately, the comments stop, but so does any attention from Mike. The promotion ends up going to someone else, and, a couple of months later, she receives a poor performance review.
- Is this sexual harassment?

## 2- A Sense of Humor

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- Everyone at work seems to like Matt. He's friendly and outgoing, and the lunchroom echoes with laughter at his jokes. Heather doesn't mind the jokes sometimes, but, lately, they've been getting really raunchy and sexually explicit.

## 2- A Sense of Humor (cont.)

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- One day after lunch, Heather approaches her supervisor, Joe. She explains that she finds Matt's jokes offensive and that his language makes her uncomfortable. Joe reminds her that everyone else on the team seems to enjoy the jokes, that Matt's not targeting her, and that they're just jokes. Maybe she just needs to lighten up and have a sense of humor.
- Is this sexual harassment?

# 3 - Private Area

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Bill, the manager of the auto shop at a dealership, calls Jim into his office. Jim is one of his most talented, veteran mechanics. Jim pretty much keeps to himself during the day, preferring to get his work done rather than socialize. Still, Bill has a problem. Last week, Carole, who was recently hired to work in the parts department, complained to Bill about the pin-up calendar Jim had displayed in his work area.

## 3- Private Area (cont.)

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- When Bill asks Jim to take the calendar down, Jim bristles. Jim reminds Bill of the years of service he's put in. He says that he didn't force Carole to look at anything, and, if she doesn't like it, she doesn't have to come over and deliver parts to him. It's his private work area, anyway. So what's the big deal?

Is it harassment? Is Jim right? Or is Bill?

## 4- Didn't Say a Word

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- Every day, Marcus whistles when Claire passes by his desk. He rarely ever speaks to Claire, but Marcus always seems to have his eyes on her. He stares, bites his lip or grunts. It's begun to make Claire feel very uncomfortable, to the point where she walks all the way to the other side of the office to avoid passing his desk.
- Is this sexual harassment?

# 5- Man Up

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- Dan has been having a hard time in the warehouse. A couple of weeks ago, Dan accidentally dropped a box he was carrying. Brad, one of his co-workers, joked that Dan was too weak to work it. Since then, other co-workers have joined in the taunting, calling him “weak,” “girly-man” and “sissy.”

## 5- Man Up (cont.)

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- He went to his supervisor, Tom, to complain. Tom told Dan that the comments were “stupid,” but he needed to learn how to stand up for himself and “man up” if he ever wanted his co-workers to respect him.
- Is this sexual harassment? Is Tom right? How would you handle this situation?

# 6- Just Dinner

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- Practically every day for the past two months, Marcus has been asking Cheryl out to dinner. At first, it seemed innocent enough, and Cheryl thanked him for the invitation but politely declined. She told Marcus she wasn't interested in pursuing a romantic relationship. She thought that would be the end of it, but, the next day, he asked again.

## 6- Just Dinner (cont.)

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- Marcus was persistent, asking her day after day. He's never said anything mean or threatening, but he just won't take "no" for an answer. Marcus is convinced that, eventually, Cheryl will change her mind. After all, he isn't asking for much—just dinner.
- Is this sexual harassment?

# 7- A Big Tipper

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- Olivia is the newest hire at the restaurant, and, so far, she's been doing a great job. One night, she looks into the dining room and feels her stomach sink. She approaches Laura, her supervisor, and says that Greg just got seated at one of her tables. Olivia explains that Greg, a regular, has been making comments about her body, asking her on dates and touching her when she walks past the table.

## 7- A Big Tipper (cont.)

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- Laura nods, knowingly, and explains that some customers can be like that, but Olivia needs to act like a professional and remember that the most important thing is good customer service. Plus, Greg is a notoriously big tipper. When Olivia asks if another waitress can serve him, Laura frowns. She tells Olivia that she needs waitresses who will serve ALL of the customers.
- Is this sexual harassment?

# Policy Against Sexual Harassment

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- **Does your policy include the following sections:**
  - Explain prohibited conduct
    - Sexual harassment and other types of harassment based on protected classes
  - Define the complaint procedure
    - Is there more than one way to make a complaint?
  - Language regarding investigations and confidentiality
    - Do not promise confidentiality; investigations will be conducted “as confidentially as possible”
  - Assurance to employees that the organization will take prompt corrective action
  - Anti-retaliation clause

# Reporting Procedure

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- Employees to report complaints of harassment to their supervisor
- If the supervisor is the alleged harasser, provide another avenue for employees to make complaint (e.g., Human Resources)
- Consider implementing a hotline by which employees can make complaints
- Employees may also report allegations of retaliation through the same procedure
- Develop a procedure for handling reports of harassment against senior management and executives

# The Role of a Supervisor

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- Understand how to recognize and report sexual harassment
- Take all complaints seriously
- Report all complaints of sexual harassment immediately
- Assist with investigations as needed
- Understand the premise of “vicarious liability”
- Be the Example!



# How to Handle a Complaint

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- Write it Down!
  - Be specific and stick to the facts
- Report the complaint to HR IMMEDIATELY
- Discuss anti-retaliation
- Determine intermediate measures and investigation process
- Summarize (in writing) the conclusion
- Follow up with involved parties
- Monitor for retaliation or any other follow-up issue



# Investigation Process

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- Prompt, thorough, and impartial.
- The alleged harasser should not have any direct or indirect control over the investigation.
- Interview the complainant, alleged harasser, and others who could reasonably be expected to have relevant information
- Before completing the investigation, take steps to make sure that harassment does not continue.
  - Examples of interim measures are paid administrative leave, making scheduling changes to avoid contact between the parties or placing the alleged harasser on non-disciplinary leave with pay pending the conclusion of the investigation.

# Avoid Retaliation

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- Do not discuss investigation
- Treat all employees with respect
- Do not ignore employees
- Do not change terms or conditions of employment
- Do not take adverse action against an employee



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