

DEFINING SEXUAL HARASSMENT

In 1980, the EEOC issued its "Final Amendment to Guidelines on Discrimination Because of Sex." These guidelines defined sexual harassment as a form of sex discrimination and went on to say:

"Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
2. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, or hostile, or offensive working environment."

In 1986, the United States Supreme Court identified two forms of sexual harassment: "quid pro quo" and "hostile environment."

"Quid pro quo" applies when a person in a power position - a boss or supervisor - makes decisions that affect an employee's job based on whether the employee complies with his or her sexual demands.

"Hostile environment" applies when the harassing behavior of anyone in the workplace - not only a boss or supervisor - causes the workplace to become hostile, intimidating, or offensive and unreasonably interferes with an employee's work.

The national Advisory Council on Women's

Educational Programs has defined sexual harassment as "the use of authority to emphasize the sexuality or sexual identity of a student in a manner which prevents or impairs that student's full enjoyment of educational benefits, climate or opportunities.

The office for Civil Rights, United States Department of Education, has stated that "sexual harassment consists of verbal or physical conduct of a sexual nature, imposed on the basis of sex, by an employee or agent of a recipient that denies, limits, provides differently, or conditions the provision of aid, benefits, services or treatment protected under Title IX."

Within the last few years, our understanding of what constitutes sexually harassing behaviors has been expanded by the Minnesota Department of Human Rights (and perhaps others) to include the following, when based on gender considerations:

- sabotaging a person's work/school efforts, assignments, or reputation
- assigning a person less challenging or responsible duties
- unequal application of discipline, work/school rules, and performance standards, and
- repeatedly belittling, demeaning, or insulting a person.

Today it is generally accepted that any type of unwelcome conduct directed toward an employee or student because of his or her gender may constitute sexual harassment.

IMPORTANT TERMINOLOGY

SEXISM is an attitude. It is an attitude of a person of one sex that he or she is superior to a person of the other sex.

For example, a man thinks that women are too emotional. Or, a woman thinks that men are chauvinists.

SEX DISCRIMINATION is a behavior. It occurs when employment decisions are based on an employee's sex or when an employee is treated differently because of his or her sex.

For example, a female supervisor always asks the male employees, in a coed workplace, to move the boxes of computer paper. Or, a male supervisor always asks the female employees, in a coed workplace, to make coffee and plan office parties.

SEXUAL HARASSMENT is a behavior. It is defined as unwelcome behavior of a sexual nature.

For example, a man whistles at a woman as she walks by. Or, a woman looks a man up and down as he walks toward her.

SOME EXAMPLES OF SEXUAL HARASSMENT

VERBAL

- Referring to an adult as a girl, hunk, doll babe, or honey
- Whistling at someone, cat calls
- Making sexual comments about a person's body
- Making sexual comments or innuendos
- Turning work discussions to sexual topics
- Telling sexual jokes or stories
- Asking about sexual fantasies, preferences, or history
- Asking personal questions about social or sexual life
- Making sexual comments about a person's clothing, anatomy, or looks
- Repeatedly asking out a person who is not interested
- Making kissing sounds, howling, and smacking lips
- Telling lies or spreading rumors about a person's personal sex life

NON-VERBAL

- Looking a person up and down (elevator eyes)
- Staring at someone
- Blocking a person's path
- Following a person
- Giving personal gifts
- Displaying sexually suggestive visuals
- Making facial expressions such as winking, throwing kisses, or licking lips
- Making sexual gestures with hands or through body movements

PHYSICAL

- Giving a massage around the neck or shoulders
- Touching the person's clothing, hair, or body
- Hanging around a person
- Hugging, kissing, patting, or stroking
- Touching or rubbing oneself sexually around another person
- Standing close or brushing up against a person

TWO CATEGORIES OF SEXUAL HARASSMENT IN THE LAW

The types of sexual harassment described in court cases generally fall within one of two broad categories: "quid pro quo" or "hostile environment."

QUID PRO QUO

"Quid pro quo" cases are those in which the employee is threatened with or suffers a tangible job detriment in retaliation for refusing to give in to sexual demands. "Quid pro quo" discrimination involves basing decisions for hiring, promotion, or other job conditions such as training opportunities and career advancement on sexual grounds. Submission to or rejection of the harassing conduct is used as a basis for an employment decision, such that an employee must "return the favor" of hiring or promotion by submitting to sexual activity.

HOSTILE ENVIRONMENT

The second basis for an actionable claim in the sexual harassment arena involves discrimination through creation of a "hostile environment." Hostile environment cases are those in which no tangible job loss occurs, but where the harassment creates an abusive or offensive environment. "Hostile" or "offensive" work environment means that the climate on the job has been adversely affected by sexual harassment.

Unlike "quid pro quo" sexual harassment which may evoke from a single, isolated incident, sexually hostile or intimidating environments generally are characterized by a pattern of practice involving numerous and frequent incidents, comments, or conduct. Generally the plaintiff must demonstrate that the harassment is sustained and nontrivial.

When sexually harassing behavior is pervasive, these kinds of activities, the sexual jokes, the insulting sexual remarks or gestures, and offensive visual materials, may contribute to the creation of a hostile environment in the workplace. A hostile work environment resulting from sexual harassment is unlawful.

As an employee, you can be held personally accountable for having created the offensive or hostile work environment. If you are a supervisor who knew (or should have known) about the sexual harassment of those working for you and you did not take immediate action to stop it, you may be exposing your company to liability.