



Preventing Sexual Harassment in the Workplace

EBC

PAYROLL • HR SERVICES

2 Agenda

- Recognition
 - What is harassment?
- Prevention
 - Types of harassment and how to prevent it.
- Know it when you see it
- Know what to do about it

SEXUAL HARASSMENT WILL NOT BE TOLERATED

Why Are We Here and Why Should You Care?

- First – NYS has passed a law that requires all employers to train employees about harassment and the prevention of such in the workplace
- Second – You need to know what constitutes harassment so you can recognize it and avoid it
- Third – You need to know what procedures to follow if you witness or are a victim of harassment
- Fourth – You need to know the potential consequences – including discipline in the workplace and potential civil liability

Federal Anti-Harassment Laws



Protected Classes Under Federal Law

It doesn't matter if you're younger or older, male or female, religiously observant or devoutly atheist. People of all races, religions, nationalities, and backgrounds can be victims of harassment. Because certain people are more likely to suffer discrimination or harassment, they are recognized as protected classes and specific laws have been enacted to protect them.

Can you name the Protected Classes under FEDERAL Law?

Race, Color, National Origin, Religion, Disability, Sex, Pregnancy, age, if over 40, genetic information, AND sexual orientation and gender identity as of June 2020.

Protected Classes Under New York Law

New York State and New York City law protect workers from discrimination and harassment based on their membership in a protected class or because of their known association or relationship with a member of a protected class.

Employers may be liable to non-employees, such as contractors, subcontractors, vendors, consultants, and their employees, for discrimination and harassment when the employer, its agents, or supervisors knew or should have known that the non-employee was subjected to harassment or discrimination in the employer's workplace, and the employer failed to address and correct it immediately.

Protected Classes Under New York Law

In New York, protected classes include a person's actual or perceived:

- ✓ Age if over 18,
- ✓ Race, including traits historically associated with race, including but not limited to hair texture and hairstyles such as braids, locks and twists,
- ✓ Creed,
- ✓ Color,
- ✓ National origin or citizenship status,
- ✓ Sexual orientation,
- ✓ Military and veteran status,
- ✓ Gender or sex, including pregnancy,
- ✓ Sexual and reproductive health decisions,
- ✓ Disability,
- ✓ Predisposing genetic characteristics,
- ✓ Marital status or partnership status,
- ✓ Caregiver status,
- ✓ Domestic violence, sex offense, or stalking victim status,
- ✓ Religion,
- ✓ Prior criminal conviction when the employer's use of the information is in violation of New York Corrections Law section 752,
- ✓ Prior criminal arrest, accusation, or prosecution that was terminated favorably for the individual,
- ✓ Familial status,
- ✓ Gender identity, dysphoria, expression, or transgender status,
- ✓ Credit history,
- ✓ Unemployment status,
- ✓ Salary history,
- ✓ Opposition to practices prohibited by the New York State Human Rights Act, or filing a complaint, providing testimony, or assisting in any related proceeding.

Sexual Harassment Defined

Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity, and the status of being transgender. It includes unwelcome conduct that is either of a sexual nature, or that is directed at a person because of their sex in any of the following circumstances:

- The conduct has the purpose or effect of interfering with the person's work performance or of creating an intimidating, hostile, or offensive work environment, even if the employee is not the intended target of the sexual harassment;
- The conduct is made either explicitly or implicitly a term or condition of a person's employment; or
- Submission to or rejection of the conduct is used as the basis for employment decisions affecting a person's employment.

Sexual Harassment Defined

Examples of behavior that may be considered unlawful sexual harassment are:

- Physical assaults of a sexual nature which can be as extreme as rape, sexual battery, molestation, or attempts to commit these acts.
- Intentional or unintentional physical conduct which is sexual in nature like touching, pinching, poking, patting, grabbing, or brushing against another employee's body.
- Sexual or discriminatory displays or publications anywhere in the workplace, such as pictures, posters, calendars, objects, promotional material, reading material, or graffiti, or other materials that are sexually demeaning or pornographic can also be considered sexual harassment.

Sexual Harassment Defined

Examples of behavior that may be considered unlawful sexual harassment are:

- Unwanted sexual advances, propositions, or other sexual comments. These can include requests for sexual favors along with threats concerning an employee's performance evaluation, a promotion, or other job benefits pressure for unwelcome sexual activities, and sexual gestures, noises, remarks, jokes, or comments about a person's sexuality or sexual experience that are severe or pervasive enough to create a hostile work environment.
- **Sexual harassment can occur between persons of the same sex as well as individuals of different sexes.**

Hostile Work Environment Defined

A hostile environment on the basis of sex may be created by any action previously described, in addition to unwanted words, signs, jokes, pranks, intimidation, physical actions or violence, either of a sexual nature or not of a sexual nature, directed at an individual because of that individual's sex.

Hostile environment sexual harassment includes:

- Sexual or discriminatory displays or publications anywhere in the workplace, such as displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic.
- This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
- This also includes sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience.

Hostile Work Environment Defined

Hostile actions taken against an individual because of that individual's sex, such as:

- Rape, sexual battery, molestation or attempts to commit these assaults;
- Physical acts of a sexual nature (including, but not limited to, touching, pinching, patting, grabbing, kissing, hugging, brushing against another employee's body or poking another employee's body);
- Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
- Sabotaging an individual's work;
- Bullying, yelling, name-calling.

Sex Stereotyping Defined

Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of either sex should act or look.

- Harassing a person because that person does not conform to gender stereotypes as to “appropriate” looks, speech, personality, or lifestyle is sexual harassment.
- Harassment because someone is performing a job that is usually performed, or was performed in the past, mostly by persons of a different sex, is sex discrimination.



14 Why People Are Reluctant to Report Harassment



What's in your Policy?

Most workplace harassment prevention policies offer multiple pathways to report harassment – the hope being that victims find one they feel comfortable with.

For example, in addition to reporting to the employee's direct manager, they could also go to another manager, talk to their own boss's boss, use the company's reporting hotline, or contact HR directly.

**Report
it!**

Important Resources

Site Leadership and Management and/or Human Resources

Where you can find the policy: Posted in your break room and in your handbook. Obtain a Complaint Form from Human Resources. For additional information, visit: www.ny.gov/combating-sexual-harassment-workplace

A complaint alleging violation of the Human Rights Law may be filed either with DHR or in NYS Supreme Court. Complaints may be filed with DHR any time **within one year** of the alleged discrimination. You do not need to have an attorney to file. More information: www.DHR.ny.gov

An individual can file a complaint with the EEOC anytime within 300 days from the alleged discrimination. A complaint must be filed with the EEOC before you can file in federal court. You do not need to have an attorney to file. More information: www.EEOC.gov.

Recognizing Unlawful Harassment

Sexual harassment can occur between any individuals, regardless of their sex or gender.

The perpetrator of sexual harassment can be anyone in the workplace:

- The harasser can be a coworker of the recipient
- The harasser can be a supervisor or manager
- The harasser can be any third-party, including: a non-employee, intern, vendor, building security, client, customer or visitor.

Recognizing Unlawful Harassment

Harassment can occur whenever and wherever employees are fulfilling their work responsibilities, including in the field, at any employer-sponsored event, trainings, conferences open to the public and office parties.

- Employee interactions during non-work hours, such as at a hotel while traveling or at events after work can have an impact in the workplace.
- Locations off site and off-hour activities can be considered extensions of the work environment.
- Employees can be the target of sexual harassment through calls, texts, email and social media.
- Harassing behavior that in any way affects the work environment is rightly the concern of management.

Recognizing Unlawful Harassment

Is the behavior unwelcome?

The law isn't intended to prohibit all friendly banter or lively conversation at work. But everyone involved – including those who can overhear the conversation – must be OK with it. If anyone finds the conversation unwelcome – well, now we're in a different situation. Keep in mind that employees do not actually have to say that a conversation or other conduct makes them uncomfortable – if they don't solicit or invite the questionable behavior, then according to the EEOC, it could be unwelcome.

Is the behavior related to a protected class or status?

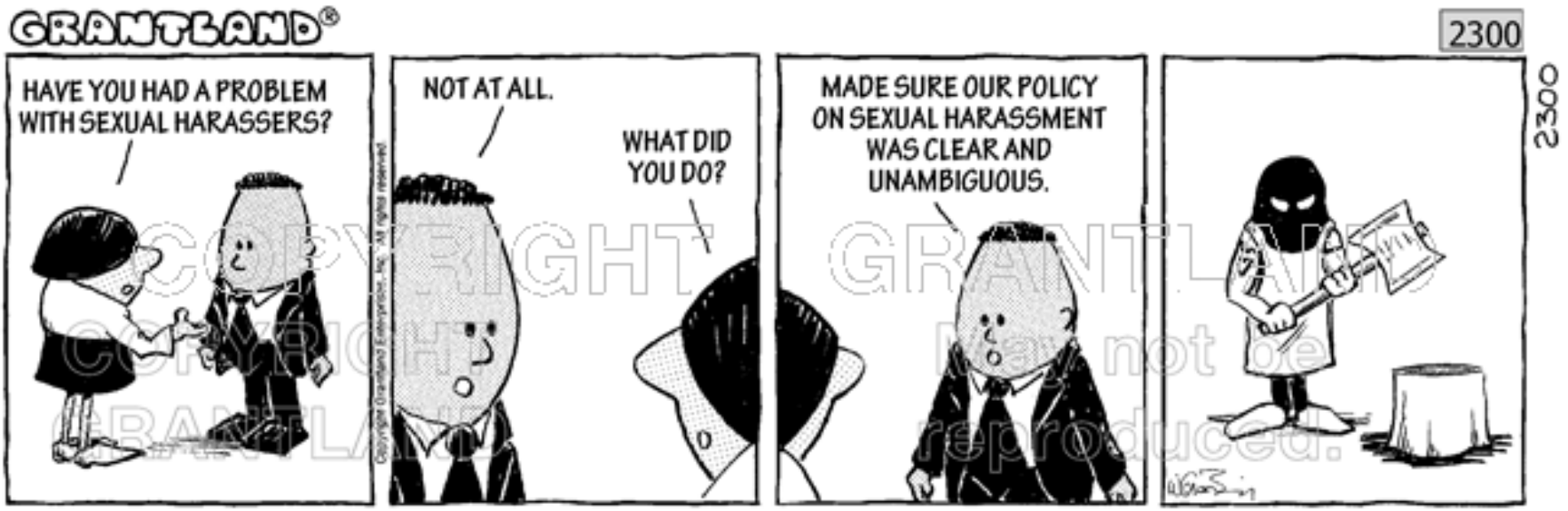
Not all unwelcome conduct is harassment. Of course we strive for all workplace behavior to be professional and respectful, but in order to be considered unlawful harassment, conduct has to be related to a protected status, such as race, religion, or disability.

Recognizing Unlawful Harassment

Is the behavior severe or pervasive?

One incident involving severe, unwelcome conduct, such as a physical assault, could certainly qualify as unlawful harassment. But in many cases, harassment takes a less obvious path, building and building over time until it creates an intimidating, offensive, or hostile work environment for the victim. If multiple instances of unwelcome behavior ultimately affect the conditions of someone's employment, the behavior can be considered illegal.

22 Recognizing Unlawful Harassment: Manager's Focus



Knowledge Check: Harassment Laws that Protect You

Which three characteristics are protected from workplace discrimination and harassment under the federal and New York law?

- 1) Deaf
- 2) Japanese-American
- 3) Under 18 years of age
- 4) Middle Eastern descent
- 5) Tattoos related to an individual's membership in a professional football team's fan club

Quid Pro Quo Sexual Harassment



Hostile Environment Sexual Harassment



Retaliation

In order to maintain a workplace that's free from harassment, all employees need to feel confident that they can report harassment without suffering any negative consequences for doing so. **Retaliation is the term that's used to describe any action that is taken against an employee as improper punishment for engaging in certain activities that are protected under anti-discrimination law.**

➤ Retaliation can take many forms, including disciplining, reassignment or transfer; and firing the employee. Also reducing pay or hours; delivering reprimands; or engaging in verbal abuse. Even excluding an employee from meetings or from training opportunities or withholding desirable job assignments can be forms of retaliation. The damaging effects of retaliation are so serious that it's considered its own form of illegal discrimination, on par with any of the discriminatory and harassing conduct that we've discussed.

Retaliation: Manager's Focus

\$10.9 Million Jury Verdict For a City of Boston Employee Who Suffered Discrimination After Complaining About Disparate Treatment.

Ms. Chantal Charles, who is African-American and Haitian, filed a complaint with the Massachusetts Commission Against Discrimination in 2011 based on the behavior of her supervisor. As a result, Charles began receiving negative job evaluations. The supervisor also refused to allow Charles to use her management or Haitian title, denied overtime pay, flex hours, and other benefits that were provided to other employees who were not African-American.

The case ultimately came before a Suffolk Superior Court, and the jury in the case awarded Charles \$500,000 for emotional distress, \$389,000 in additional pay, and \$10 million in punitive damages.

Dealing Proactively with Harassment: Manager's Focus

Supervisors and managers are held to a high standard of behavior. This is because:

- They are placed in a position of authority by the employer and must not abuse that authority.
- Their actions can create liability for the employer without the employer having any opportunity to correct the harassment.
- They are expected to model appropriate workplace behavior.
- They are responsible for any harassment or discrimination that they should have known of with reasonable care and attention to the workplace for which they are responsible.
- They are required to report any harassment that is reported to them or which they observe.

Bystander Intervention

Bystander Intervention
starts with **YOU**



Bystander Intervention: Manager's Focus

As a manager, even more of that responsibility falls to you. In fact, you have a duty to stop harassing behavior if you are present when it happens.

Leadership must report any harassment that they observe or know of, even if no one is objecting to the harassment.

If a supervisor or manager receives a report of harassment, or is otherwise aware of harassment, it must be promptly reported to the employer, without exception:

- Even if the supervisor or manager thinks the conduct is trivial
- Even if the harassed individual asks that it not be reported
- Supervisors and managers will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue.

Supervisors and managers will also be subject to discipline for engaging in any retaliation.

Handling a Complaint: Manager's Focus



32 Knowledge Check: Dealing with Harassment: Manager's Focus

Marcel has taken a race-based harassment concern to his manager, who decides to move Marcel to the night shift so he can "get away from" the individuals who are harassing him. Marcel does not wish to change his hours, because he is responsible for childcare in the evenings.

Choose the correct statements, based on Marcel's situation.

- 1) The manager's decision to change Marcel's hours could be considered retaliation
- 2) Rather than changing Marcel's hours, the manager should address the harassment Marcel has reported
- 3) The manager's response is acceptable

Which three steps are part of a manager's proper handling of a harassment complaint?

- 1) Explaining the concept of limited confidentiality to the complainant
- 2) Referring the complaint to HR according to company policy
- 3) Being open to the complaint
- 4) Beginning a personal investigation into the incident
- 5) Warning the victim that they will likely face retaliation from their harasser and that there's nothing you can do about it

Harassment Outside of Work or After Hours

A company party. An offsite weekend management retreat. A dinner meeting with clients. What do all these events have in common, besides great food and drinks? They're all places and events that you and other members of your company are protected from harassment. Even if it's after hours, on the weekend, or away from the office, if it's tied to your job and work responsibilities, it's still the workplace as far as the law is concerned.

➤ You and your team are still protected from harassment from those both inside and outside your company. Because these events are outside the office, people might be inclined to relax their standards of conduct. Throw alcohol into the mix and there's even more of a possibility that inappropriate or offensive jokes may be told, or someone may act more sexually forward than they would at the office or during a typical workday.

Knowledge Check: Handling Harassment Situations

Emily attended the company's off-site monthly happy hour. At one point in the evening, she found herself cornered by the manager of a different department, Cody, who was clearly inebriated. Cody attempted to kiss her and suggested his department "might have an important position" for her "if the evening goes well." Emily gently attempted to avoid him, but when he persisted, she rejected him firmly. He responded with vulgarity, insults, and graphic sexual comments. No one else witnessed this. Upset, Emily left the party and reported the incident to her manager, Kelley, the following Monday.

As it happens, Cody is Kelley's former mentor, with whom she is still friendly. Kelley confronted him privately. Cody insisted he was simply drunk and barely remembered the encounter, promising "it will never happen again." Kelley explained this and asked Emily to reconsider filing a report, saying, "That's not who he really is." Emily replied, "Actually, I went to HR this morning and reported it." Kelley replied tersely, "Don't forget we're reviewing your performance this afternoon. Nice timing, huh?"

Knowledge Check: Handling Harassment Situations

How does the setting in which the incident took place affect how it should be handled?

- 1) The setting doesn't matter. The incident should be handled like any other workplace harassment report.
- 2) Since it took place after hours in a non-work setting, the company isn't responsible for addressing Emily's complaint.

What aspects of this incident reflect quid pro quo harassment?

- 1) Cody implied that he would promote or otherwise reward Emily with a better position if she accepted his advances
- 2) Cody, as a manager, is in a position of authority over Emily
- 3) Emily's manager, Kelley, tried to pressure Emily to drop the complaint against Cody

Knowledge Check: Handling Harassment Situations

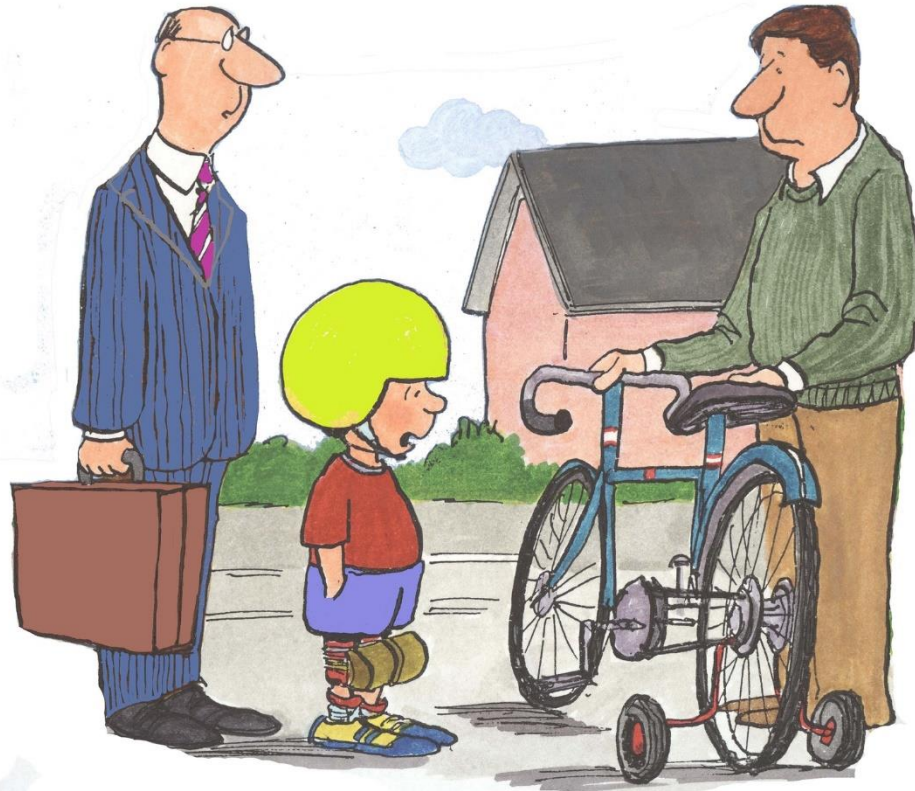
Suppose that, instead of a manager with her company, Emily's harasser had been a member of the bar staff at the happy hour location. How would that change her reporting options?

- 1) Emily would need to take her harassment complaint to the bar's general manager or CEO, not her manager or her employer's HR Department
- 2) Nothing about the situation would change for Emily

What type of improper behavior is suggested by Kelley's comment regarding Emily's performance review and her HR complaint about Cody?

- 1) Retaliation
- 2) Hostile environment harassment
- 3) Quid pro quo sexual harassment

Personal and Vicarious Liability: Manager's Focus



"Dad, I've decided to get my personal injury lawyer involved."

Remedies for Victims of Harassment

In New York, employees who have suffered harassment may be entitled to a variety of remedies, including compensatory damages, punitive damages, civil fines and penalties, and recoup attorney's fees.

The State may also order the employer to put a stop to the harassing activity, order the employer to take certain remedial actions, (such as hiring, reinstatement, or promotion, or provide other accommodations to the affected employee), and require the employer to report on its compliance.

Benefits of a Respectful & Harassment-Free Workplace: Manager's Focus

Stellar Dental

Victims claimed the company did not protect them when they complained about a male coworker was harassing them and subjecting them to a HOSTILE WORK ENVIRONMENT that included severe and pervasive sexualized comments and unwanted touching in the workplace

Stellar then retaliated against two of the women when they fired them and then constructively discharged the third

Protocol (local)

The U.S. Equal Employment Opportunity Commission lawsuit alleges the Protocol owner made unwelcome sexual comments and advancements to female employees

Uber

The EEOC launched an investigation in 2017 and found evidence that Uber violated Title VII of the Civil Rights Act of 1964 by tolerating a culture of sexual harassment and retaliation

Knowledge Check: What You Do Matters

The first step of handling any workplace harassment is always to confront your harasser directly.

Is this a true statement?

- 1) Yes, it's true because you must give the harasser a chance to apologize and change their behavior before filing an official complaint
- 2) No, it's not true. You are not required to confront your harasser

Knowledge Check: What You Do Matters

Which four statements describe the benefits of a harassment-free workplace to the company and its employees?

- 1) It promotes a healthy and positive work environment
- 2) It protects the company's reputation
- 3) It avoids the disruption of investigations and inquiries from government authorities
- 4) It reduces corporate tax liability
- 5) It makes it more likely that coworkers will "call out" inappropriate behavior that could lead to harassment

Knowledge Check: The Importance of Your Role

Which statement is a possible consequence for a manager's harassment of an employee?

- 1) The manager could be held personally liable for the unlawful harassment
- 2) A federal court may issue an order forcing the company into bankruptcy
- 3) The company's executive team may be replaced by managers appointed by the EEOC

Knowledge Check: The Importance of Your Role

Which four statements describe the benefits of a harassment-free workplace to the company and its employees?

- 1) It promotes civility, respect, and professionalism and inspires unity, productivity, and cooperation
- 2) It helps protect the company from investigations and lawsuits
- 3) It makes coworkers less likely to unknowingly engage in harassing behaviors
- 4) It reduces the company's corporate tax liability
- 5) It makes it unnecessary to educate employees about harassment
- 6) It helps protect the company's reputation

45 Friendly Reminder



Important Resources

Site Leadership and Management and/or Human Resources

Where you can find the policy: Posted in your break room and in your handbook. Obtain a Complaint Form from Human Resources. For additional information, visit: www.ny.gov/combating-sexual-harassment-workplace

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**Thank
You!**



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