EEOC

Workplace Harassment

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What You Need to Know

*How to know when things are not okay, and what you can do.*

- What harassment is and why it is a problem
- Company policy against harassment
- Procedures for dealing with harassment
- How to investigate incidents and determine whether harassment has occurred
- Proper action to stop harassment and correct its effects
Some Key Laws Enforced by EEOC

- **Equal Pay Act of 1963 as amended, “EPA”:** Difference in pay based on gender
- **Title VII of the Civil Rights Act of 1964, as amended, “Title VII”:** Race, color, religion, sex (including pregnancy, gender identity, sexual harassment) and national origin
- **Age Discrimination in Employment Act of 1967, as amended, “ADEA”:** Age based discrimination (Applicants and employees 40 years of age or older)
- **Americans with Disabilities Act of 1990, as amended, “ADA”:** Disability (Persons with disabilities, record of a disability, regarded as having a disability)
- **Genetic Information Nondiscrimination Act of 2008, “GINA”:** Use of family genetic information unlawful in employment decisions
Harassment in the Workplace

• Harassment takes a toll on employees, their families, employers, and the economy. It can lower productivity, increase turnover, and harm the reputation of individuals and organizations.

• Over 30% of charges include harassment claims.

• Although there is much attention about sexual harassment, the general principles of workplace harassment apply to all protected bases.

• Addressing systemic harassment is one of the EEOC’s national priorities.
What is harassment?

• Harassment is unwelcome conduct based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information.

• Harassment is illegal when the unwelcome conduct: 1) is a condition of employment or 2) creates an intimidating, hostile, or abusive work environment.

• Harassment is often blatant.

• Harassment can also be subtle.
Hostile Environment Harassment

- Comments or conduct that have the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating or offensive working environment.
- This category of harassment is often more subtle than harassment that results in a tangible employment action, and is often more difficult to determine where the line falls between lawful and unlawful.
- The key issues here are frequency and severity.
- “Reasonable person” standard governs.
- Anyone can commit this type of harassment - a management official, coworker or non-employee.
What is Prohibited

Some examples of such harassment are:

• Using epithets or slurs
• Mocking, ridiculing or mimicking another's culture, accent, appearance or customs
• Posting or circulation of any written materials, pictures, signs or cartoons that denigrate an individual's protected class
• Threatening, intimidating or engaging in hostile or offensive acts that focus on an individual’s protected class
• Pushing, shoving, or intentional acts perpetrated in whole or in part because of an associate’s race, color, religion, national origin, age, sex, disability
When Is It Harassment?

- One extremely serious incident
- Intimidating, hostile, offensive environment
- Unreasonable interference with work performance
- Negative effect on an individual’s employment opportunities
What Harassment Is Not

• Occasional teasing
• Offhand comments
• Isolated incidents that are not extremely serious
Keep in mind that the key to determining whether or not a behavior is offensive generally depends on how it is perceived, not how it was intended. People often have different views about what is offensive. The fact that some people may not be offended by certain behavior does not mean that it is acceptable.
HARASSMENT SCENARIOS

These harassment scenarios will test your understanding of workplace harassment, and allow you and share your perceptions and observations with others.
Scenario #1
Analyze the Supervisor’s Response

• Mary dreads each time her office color photocopier breaks down because the repair person assigned to her office always leers at her and makes sexually suggestive comments.

• She has fears that if she complains nothing will be done about it because the agency does not have control over repair person because he is an employee of the photocopier service company.

• The supervisor does relay Mary’s complaints to the service company, but no action is taken.
Scenario #2

- William keeps a large bible on his desk at work and always wears a large silver cross around his neck. At times William will use biblical quotations to support his comments and assertions that his observations are correct in conversations with his co-workers. Additionally, he usually tells people to have a “Blessed Day”.

- Joe, one of William’s co-workers, has started referring to him as “Saint Willy”. This has gotten a lot of laughs around the office. William has confronted Joe about this and asked him to stop. Joe response was “can’t you take a joke”. Joe not only has not stopped referring to William as “Saint Willy”, but he has encouraged others to do so.
Diego, Nate, and Ethan work at local roller coaster park Plummet. Ethan is gay. Because they know it makes Ethan uncomfortable, Diego and Nate regularly rate the attractiveness of male guests at the park, discuss the sex lives of male guests and celebrities, and play sexually explicit videos that feature naked men on their phones during their lunch breaks. Is Diego and Nate's behavior illegal harassment?
Scenario #4

Tariq, a Christian Arab, works at a computer store. When a supervisor isn't around, his co-workers call him a terrorist and ask him if his family belongs to ISIS. They also make negative comments about Muslims because they think Tariq is Muslim. Has Tariq been discriminated against?
Scenario #5

• Juanita recently graduated from high school and began working as a manager at a teen clothing store. Juanita regularly called Barbara, a 55 year old employee, "Grandma." At one staff meeting, Juanita gave Barbara a cane as a joke. Another day, Juanita told Barbara to take the afternoon off and go home to take a nap. Barbara reported the comments. After several months, Juanita fired Barbara. Juanita believes that a younger employee will relate better to the store's teen customers. Did Juanita harass and retaliate against Barbara?
Harassment can take many different forms. It can involve verbal, physical or visual conduct and can occur on or off the work site. The harasser can be your manager, a manager in another area, a co-worker, or others in your workplace, such as clients or customers.
Employer Liability

• Preventing liability
• Conduct of supervisors and managers
• Conduct of co-workers
• Conduct of non-employees
When are employers liable for harassment?

The employer is liable for harassment if a supervisor’s harassment results in an adverse employment action such as termination, failure to promote or hire, and loss of wages.

The employer can avoid liability if:

1) the employer reasonably tried to prevent and promptly correct the harassing behavior; and

2) the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer.
Is the harasser a “supervisor”?

• Has authority to decide or recommend tangible employment actions

• Has authority to direct employee’s daily work activities

• Doesn’t have actual authority, BUT employee reasonably believed the harasser did
Harassment That Results In A Tangible Employment Action

- A management official’s harassment that results a significant change in an individual’s employment status (e.g., hiring, firing, promotion, failure to promote, demotion, undesirable reassignment).

- Only management officials or other individuals designated to perform supervisory functions (e.g., scheduling, approving vacation, evaluating performance) can commit this type of harassment.

- An Agency is automatically liable for this type of harassment regardless of whether upper management had knowledge of it.
Harassment
By Co-workers, Non-Employees

• **Co-worker Harassment:**
  – The agency is liable if it knew or should have known of the harassment and failed to take immediate and appropriate corrective action.

• **Non-employees:**
  – The liability standard for non-employees is the same as for employees - Except consideration is given to the extent of the agency’s control over the non-employee. For example, an agency may not be able to control the actions of a one-time visitor to its workplace, but it would be able to correct harassment by an independent contractor with whom it has a regular relationship.
The employer is liable for harassment by non-supervisory employees or non-employees over whom it has control (e.g., independent contractors or customers on the premises), if it knew or should have known about the harassment and failed to take prompt and appropriate corrective action.
Employer
Reasonable Care to prevent harassment

• Anti-harassment policy
• Effective complaint procedure
• Dissemination
• Reasonable Investigation
• Appropriate action
How can employers prevent harassment?

• Prevention is the best tool to eliminate harassment in the workplace.

• Employers can prevent and correct unlawful harassment by:
  – Clearly communicating to employees that harassing conduct will not be tolerated;
  – Establishing an effective complaint or grievance process;
  – Providing anti-harassment training to all managers and employees and taking immediate and appropriate action when an employee complains;
  – And, creating an environment in which employees feel free to raise concerns and are confident that those concerns will be addressed.
Elements of a Complaint Procedure

- Encourage employees to report harassment before severe or pervasive stage
- Designate more than one individual to take complaints
  - Ensure they are in accessible locations.
  - Instruct all supervisors to report complaints of harassment to appropriate officials and NOT TO RETALIATE
- Assure employees of confidentiality to the extent possible.
Employee: Duty to complain potential issues

• Provide information to support allegation?

• Truthful information?

• Cooperate with investigation?

• Any unreasonable delay?

• Equitable tolling: (Did harassment and threats prevent employee from complaining?)
Employee: Duty to complain

- Is complaint procedure risk-free?
  - Was it useless to complain?
  - Were other employees who complained of harassment ignored or retaliated against?
  - Does fear for personal safety justify failure to complain?

- Did you complain outside set procedure?
Dealing with Minor Incidents

- Determine the exact nature of the incident
- Counsel the alleged harasser informally
- Reassure the victim
- Monitor the situation carefully
Taking Corrective Action

• Consult your manager before taking action
• Implement effective remedial measures
• Balance competing concerns
• Make certain the victim is not adversely affected
• Stop the harassment and ensure that it does not recur
• Correct the effects of the harassment
• Follow up to make sure the problem is solved
RETALIATION is a form of DISCRIMINATION and is ILLEGAL!
Retaliation

- It is illegal to fire, demote, harass, or otherwise “retaliate” against an applicant or employee for filing a charge of discrimination, participating in a discrimination proceeding (such as a discrimination investigation or lawsuit), or otherwise opposing discrimination. For example, it is illegal to retaliate against applicants or employees for:

  - filing or being a witness in an EEO charge, complaint, investigation, or lawsuit
  - communicating with a supervisor or manager about employment discrimination, including harassment
  - answering questions during an employer investigation of alleged harassment
  - refusing to follow orders that would result in discrimination
  - resisting sexual advances, or intervening to protect others
  - requesting accommodation of a disability or for a religious practice
  - asking managers or co-workers about salary information to uncover potentially discriminatory wages.
Participating in a complaint process is protected from retaliation under all circumstances. Other acts to oppose discrimination are protected as long as the employee was acting on a reasonable belief that something in the workplace may violate EEO laws, even if he or she did not use legal terminology to describe it.
Examples of retaliation by an employer could include:

- reprimanding the employee or give a performance evaluation that is lower than it should be
- transferring the employee to a less desirable position
- engaging in verbal or physical abuse
- threatening to make, or actually make reports to authorities (such as reporting immigration status or contacting the police)
- increasing scrutiny
- spreading false rumors, treat a family member negatively (for example, cancel a contract with the person's spouse)
- making the person's work more difficult (for example, punishing an employee for an EEO complaint by purposefully changing his work schedule to conflict with family responsibilities)
RETLATION ELEMENTS

1. Employee engages in **protected activity**...

2. ...faces an **adverse employment action**.

3. **Causal connection** between protected activity and adverse employment action
   - Timing
     - Legitimate Non-Retaliatory Reason (LNRR)
     - Pretext
Remedies

- Make-whole relief
  i.e., backpay, reinstatement
- Injunctive relief
- Compensatory damages
- Punitive damages
- Attorney’s fees
Eliminating Harassment Benefits Everyone

HARASSMENT can cause...

• Reduced Productivity
• Lowered Morale
• Absenteeism
• Employee Turnover
• Litigation Costs
• Cost the Harasser a Job
• Embarrassment
Preventing Charges of Discrimination

• Lead By Example
• Don’t Wait for A Complaint of Harassment
• Respond Promptly and Appropriately to Complaints of Discrimination
• Don’t Retaliate
• Be Honest
Responding to Internal Complaints

– Be prepared to receive complaint
– Recognize positive of complaint
– Put your emotions aside
– Why do we blame the victim/unconscious bias?
– Recordkeeping
– This is your opportunity
Obligations of Employers

- Make the **workplace free of unlawful** discrimination, harassment and retaliation
- Promptly and confidentially **investigate** complaints of discrimination, harassment and retaliation
- Where discrimination, harassment and retaliation may have occurred, **take prompt and appropriate remedial action** (i.e., discipline commensurate with the offense)
What can you do?

• Understand and respect individual differences
• Think before you speak & be careful with humor
• Eliminate the use of stereotypes and generalizations
• Recognize your own biases and prejudices
• Ask your employer for discrimination and/or harassment training
EEOC’s Process

- Take complaint
- Investigate
- Make finding
- Mediate
- Reasonable Cause
- Conciliate
- No Cause
- Private Suit
- Litigate
QUESTIONS?
Contact Information

For Outreach / Training  
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