

HOW-TO BOOKS

Stopping Sexual Harassment Before It Starts

Mike Deblieux

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Stopping Sexual Harassment Before It Starts:

**A Business and Legal
Perspective**

Second Edition

Mike Deblieux

Coastal Training Technologies Corp.

500 Studio Drive
Virginia Beach, VA 23452

Stopping Sexual Harassment Before It Starts: A Business and Legal Perspective

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Mike Deblieux

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Coastal Training Technologies Corp.:	Arthur Bauer
	Todd McDonald
Editor in Chief	Karen Massetti Miller
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Introduction

Sexual harassment is one of the most complex workplace issues of our time. It is at once a legal issue, an emotional issue, a civil rights issue, and a very personal issue. It can be both easy to define and impossible to define. It can result from innocent actions or from criminal behavior. It can take place in a few seconds or require several years to develop. It can be a very public matter or an extremely private issue.

But one thing is clear about sexual harassment. It must be taken seriously by all employers. Large and small organizations across the United States are being held accountable for incidents of sexual harassment. Every employer has the duty—and the responsibility—to provide a harassment-free work environment by establishing clear policies against sexual harassment and by training executives, managers, supervisors, and employees to prevent, recognize, and report all incidents of sexual harassment. Just as important, managers also must take steps to ensure that vendors, visitors, and customers comply with their company's sexual harassment policies.

This book was written to help you understand why preventing sexual harassment is such an important business issue. It includes examples to illustrate both inappropriate and appropriate behavior as well as exercises to help you better understand how you and your organization can prevent sexual harassment. It shows what you can do to make sure the people you work with can come to work and do the job they were hired to do in an environment free of all forms of harassment.

Thank you for buying this book. More importantly, thank you for investing your time to learn more about this important topic.

About This Book

We have written and designed this book to make it easy for you to apply the information you learn to your particular job.

- ◆ Each chapter begins with *Chapter Objectives* that explain what you will learn when you read and study that chapter.
- ◆ *What Do You Think?* vignettes at the beginning of each chapter serve as short stories about workplace incidents to help you visualize how they can cause or prevent sexual harassment.
- ◆ *For Your Information* boxes are included throughout the book to expand on selected topics with key information or additional resources.
- ◆ *Take a Moment* exercises provide brief exercises or assignments to help you learn even more about sexual harassment.
- ◆ *Self-Check* reviews at the end of each chapter let you test your understanding of the information and reinforce what you've learned.

What You Will Gain from Reading This Book

Regardless of your role in the workplace, you have the potential to be a leader. This book will help you improve your leadership skills. It will help you plan your workday and your interactions with coworkers to ensure that you treat them with respect and dignity. At the same time, it will help you set an example for the people around you and avoid costly grievances and lawsuits that may result from inappropriate workplace behavior.

As a result of reading, studying, and reflecting on the information in this book, you should be able to:

- ◆ Explain why sexual harassment is both a legal issue and a productivity issue in the workplace.
- ◆ Explain why sexual harassment is a discrimination issue.
- ◆ Take steps to prevent intentional and unintentional sexual harassment.
- ◆ Avoid behavior that might be interpreted as a misuse of your authority as a supervisor to gain sexual favors from employees.
- ◆ Establish behavioral expectations for employees, visitors, and customers that will ensure that your workplace is free of all forms of harassment.
- ◆ Implement effective policies and procedures to prevent, recognize, and report all incidents of sexual harassment.
- ◆ Cooperate with human resources, legal, and management staffs to investigate and resolve all reported incidents of sexual harassment.

Acknowledgments

The author wishes to thank Art Bauer, Todd McDonald, and Karen Massetti Miller for their help, support, and assistance in writing this book. Thanks and appreciation also are extended to Lee Paterson, attorney at law, and to Teri Tracy, attorney at law, for their roles as mentors and friends. Special thanks also go to Karen Nichols for a never-failing helpful hand in juggling my calendar, travel arrangements, workshop materials, and business commitments.

This book is dedicated to my very special daughters, Nicole and Danielle, in the hope that the workplace they enter will be free of the discrimination, harassment, and sexual harassment that permeated my first workplace in 1971. It also is dedicated to the thousands of people who have attended my workshops, asked me questions, and shared stories that have raised my own consciousness on this important issue.

About the Author

Mike Deblieux, a nationally recognized human resources management trainer and consultant, is president of Mike Deblieux Human Resources in Tustin, California. He designs and presents training programs on human resources-related issues such as documenting discipline, writing performance reviews, interviewing, preventing sexual harassment, equal employment opportunity, affirmative action, and workplace violence. Mike presents more than 100 such programs each year to organizations of all sizes.

Mike also is an instructor for the University of California, Irvine, Extension Human Resources Management Certificate Program, and has received the Extension's coveted Distinguished Instructor Award. He serves as Course Leader and Blue Ribbon Speaker for the American Management Association (AMA), as well as course leader for The Employers Group and the Professionals in Human Resources Association (PIHRA).

Mike also has written *Documenting Discipline* and *Legal Issues for Managers: Essential Skills for Avoiding Your Day in Court*. Coastal offers two training videos, *How to Legally Document Employee Discipline* and *Legal Issues for Managers*, based on his books. Mike can be reached by phone at 714-669-0309 or by e-mail at mdhr@aol.com

A Note on Gender and Ethnic References

The workplace in the United States has become increasingly diverse. Men and women representing a wide variety of life experiences enter this workplace every day. In writing this book, I've tried to reflect this great diversity in a number of ways. The book includes examples that reflect the many different roles women and men play in today's workplace. In some examples, a man is cast as a manager; in others, a woman has that role. In still other examples, the text is gender neutral to reflect the fact that both men and women can be victims of sexual harassment.

In some instances, the text uses the phrase "he or she"; in others, it uses "she or he." Likewise, Native American, Hispanic American, Asian American, and African American workers appear in a variety of roles in the illustrative examples to reflect their important roles in the workplace.

It's my hope that this approach will increase your appreciation of the rich diversity of our collective workplace, as well as the increasingly complex nature of sexual harassment.

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Chapter *One*

Why Is Sexual Harassment an Issue?

Chapter Objectives

- ▶ Explain why sexual harassment is a workplace issue.
- ▶ Describe how the Civil Rights Act and sexual harassment relate to each other.
- ▶ Explain how some old, accepted workplace behaviors are, in fact, sexual harassment.
- ▶ Explain how the use of formal and informal power can both prevent and create sexual harassment.

What Do You Think?



Case Study

It was Friday night. Angelica walked in the door at home. She had alternated between tears and anger on the drive from work. Now she just wanted to lock the door to her apartment and shut out the world. But she couldn't do that. Antonio would be home in less than an hour. They had tickets for a concert by one of their favorite musical groups. They had looked forward to this concert for months. She had to go. She had to have a good time.

In the bedroom, Angelica slumped onto the bed and began to relive her day for the twentieth time. Her coworkers could be so mean sometimes. She worked just as hard as they did to sell products for Kids Motorhomes. She had more education than most of them and traveled more miles than any of them. She had also been Salesperson of the Year for the past two years.

Just before five o'clock, Mr. Camping announced that she was Salesperson of the Year for the third year in a row. For a moment, she felt so proud. Then she heard Willie say under his breath, "Yeah, I could be Salesperson of the Year, too, if I slept with my

Why Is Sexual Harassment an Issue? ●

customers.” She had ignored the remark before, but this time it hurt. Teasing was one thing, but this wasn’t teasing. She wasn’t sure she could go back to work Monday morning. She wasn’t even sure she could tell Antonio. She knew she could never tell her parents.

Is Angelica a victim of *unlawful* workplace sexual harassment? Was the law broken? The answer is *maybe*. It depends on a number of things—such as whether incidents like this have occurred before and how they affect her role in the workplace. Ultimately, if she files a lawsuit, it will depend on how a court views the evidence in her case.

Let’s ask a different question about Angelica. Is she a victim of inappropriate workplace behavior? Here the answer is clearly yes. Read her story again, and you will see that she has been victimized in many different ways. Angelica has been psychologically attacked. Willie’s comments have tarnished, if not destroyed, her reputation among her coworkers. She has been associated with a tired, old stereotype that says women get ahead by sleeping around, not by being good at their jobs. Most importantly, her family life has also been affected. Her regular safety net is not available to her. She cannot comfortably talk to her family about the problem without worrying about how they will perceive her from that point forward.

So is Angelica a victim of sexual harassment? The answer is yes. Is she a victim of unlawful sexual harassment? The answer is maybe. It depends on what an objective investigation of the facts reveals about other incidents, the impact on her work, and the effect on her work environment. In any case, this incident is cause for her company to be concerned. The company should take steps to ensure that an incident like this doesn’t occur in the future:

- ◆ It must adopt and enforce a clear sexual harassment policy.
- ◆ It must train managers, supervisors, and employees to understand, recognize, and prevent sexual harassment.
- ◆ It must discipline employees who violate the policy.
- ◆ It must recognize and reward employees at all levels who treat others with respect and courtesy.

Angelica
has been
psychologically
attacked.

The company
should take
steps to ensure
that an incident
like this
doesn’t occur
in the future.

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● Why Is Sexual Harassment an Issue?

Sexual harassment will not go away without careful and deliberate efforts to make it go away.

Why Is Sexual Harassment a Workplace Issue?

In the workplace, sexual harassment will not go away without careful and deliberate efforts to make it go away. It is a workplace issue for several important reasons:

- ◆ The law
- ◆ The diversity of the workplace
- ◆ Initiation rites and past practices
- ◆ Familiarity
- ◆ Female and male perspectives
- ◆ Employee productivity

Any one of these issues could make sexual harassment an important concern, but this unique combination makes it one of the most important business and social problems of our time. Let's look at each issue to better understand the impact of sexual harassment on your workplace environment.

Sexual Harassment and the Law

■ "Have you heard about the latest human resources department seminar?" asked George. "I mean, here we go again. Another sexual harassment 'don't touch, don't say, don't breathe' lecture by the company do-gooders! When are they gonna realize just how out of touch they are? We're just trying to have a little fun around here. They need to get a life."

In 1964, the Civil Rights Act changed the workplace forever. It placed a spotlight on how people relate to each other at work. It opened a national discussion about the roles of minorities and women at work. For the first time, it empowered people to speak out against practices, beliefs, and stereotypes that had existed in the workplace for centuries.

Did You Know?

The Civil Rights Act of 1964, as amended, prohibits discrimination in the workplace on the basis of sex. Sexual harassment is a form of sex discrimination and is therefore prohibited by law.



The Civil Rights Act was not passed to stop sexual harassment. It does, however, prohibit discrimination on the basis of sex. Over time, and as a result of a number of Equal Employment Opportunity Commission and court decisions, it has become clear that sex discrimination is not limited to hiring and promotion decisions. Sex discrimination also extends to the way people are addressed, thought of, and treated in the workplace.

When a person or group is treated differently because of their gender, they are victims of discrimination. If the discrimination has a sexual connotation—such as sexual jokes, unwelcome touching, or demands that an employee sleep with his or her boss in order to keep a job—it is sex discrimination in the form of sexual harassment. In addition to the Civil Rights Act, a number of other federal and state laws prohibit discrimination in the workplace. In some cases, state laws go beyond the scope of federal law and impose higher standards, wider coverage, and greater penalties.

When a person or group is treated differently because of their gender, they are victims of discrimination.

These laws are widely publicized and have resulted in a firestorm of lawsuits. As society has become more aware of bias and prejudice in the workplace, employees increasingly have been empowered to complain to human resources departments, state agencies, and the courts about discriminatory experiences at work. As a result, employers understand better than ever their overwhelming responsibility to create and maintain a discrimination- and harassment-free workplace. Although substantial progress has been made, we still have a long way to go. Discrimination, harassment, and sexual harassment continue to exist. Reading this book and implementing the ideas you learn from it will help you minimize the possibility of unfair treatment in your workplace.

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● Why Is Sexual Harassment an Issue?



Take a Moment

Check the equal employment posters in your workplace. In addition to the categories we've discussed, list others that are protected by your state and/or community.

Sexual Harassment and the Diversity of the Workplace

- "I was so embarrassed," thought Mina. "In my country, a man would never ask a woman to do those things."

Diversity has long been a part of the workplace. Historically, it was based primarily on national origin. At the start of the twentieth century, people from many different European countries were represented in the workforce. Some groups were stronger than others. Some had more power than others. The majority ruled, and the minority conformed to their wishes. In theory—if not in practice—the idea was that over time, everyone would blend together. In fact, the term *melting pot* was coined to illustrate how people were expected to shed their national origin and adopt the practices and beliefs of the majority.

As an increasing number of women and minorities joined the workforce, they sought to retain their own identities.

For a long time, the same assumption applied to the workplace. Women and minorities were expected to blend in with the men who came to the workplace before them. However, as an increasing number of women and minorities joined the workforce, they sought to retain their own identities.

Women, for example, sought to shed the stereotype that said they were best suited for clerical or secretarial work and began to pursue jobs in other professions and settings. They began to question previously accepted assumptions that allowed women to be addressed as "sweetheart," "honey," or "babe" at work.

They began to openly question men who propositioned, touched, or pursued them at work when they were simply trying to do their jobs. As their numbers in the workplace increased and new laws were enacted to protect them, women were better able to express their concerns about the ways they were being treated.

Over time, women and minorities found that they did not in fact have to “melt” into the society or workplace that came before them. Rather, they sought instead to maintain their own identities. In doing so, women learned that they did not have to accept unwelcome sexual advances, innuendoes, jokes, or stories as a normal part of workplace behavior.

In short, diversity has changed the operating assumptions of the workplace. When the majority of people in the workplace were men, their rules determined what was and was not acceptable. But in a diverse workplace, men and women of many colors and cultures establish rules and policies that allow everyone to be treated with respect.

Diversity has changed the operating assumptions of the workplace.

Take a Moment

We all contribute to the “diversity salad” of today’s workplace. Have you thought about your own diversity? What personal and cultural characteristics do you bring to the workplace? List some of the experiences in your life that define who you are and what is important to you.



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Sexual Harassment and Initiation Rites and Past Practices

- “I don’t know what she’s complaining about. Hey, it happened to me when I was new. Why shouldn’t she go through it?” said George. “My first boss took me to every topless bar in town. If she can’t take it, she shouldn’t be trying to compete in a man’s world.”

Today’s workforce is much less tradition bound than in the past.

George seems to think that everyone should have the same experiences he had climbing the corporate ladder. Because he survived it (or maybe even enjoyed it), he thinks everyone else should have to earn their “stripes” in the same way.

George is operating under old rules. Today’s workforce is very different and much less tradition-bound than it was when he started working. Many of George’s coworkers did not share his experiences. In fact, they might be offended that he thinks they should have.

A very public example of a workplace initiation rite occurred in 1996 with a major league baseball team. One of the team’s best pitchers was a rookie from Korea. During one game, some of his teammates cut the legs off of the pants he planned to wear on the flight home and left him a shirt and coat that didn’t match. Many of his teammates had been victims of a similar prank when they were rookies—they simply thought he should have the same experience. They expected him to understand that this initiation rite meant that he had been accepted by the team. They were shocked when he expressed humiliation and remained distant from them. Apparently in his culture, such a prank was not the way to show respect and camaraderie. Instead, it hurt him personally and publicly embarrassed the team.

Just like that baseball player, female employees do not always appreciate or respect the traditions of those who came before them. A few examples of such past practices include:

- ◆ Getting together for a lunchtime or after-work drink
- ◆ Playing golf
- ◆ Meeting in a hotel room rather than in a meeting room
- ◆ Doing personal errands for the boss to increase your chances of promotion
- ◆ Using sports analogies in every business discussion

These male-dominated practices of the past are slowly giving way to a variety of other practices that take into account the interests and needs of all people in the workplace.

Take a Moment

Think of some popular Hollywood comedies that have explored male-female differences in the workplace—movies such as *Working Girl*, *9 to 5*, and *Tootsie*. What are some of the old-school initiation rites and past practices that they satirized?



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● Why Is Sexual Harassment an Issue?

Sexual Harassment and Familiarity

- “Ivorene, we work together every day,” said Tom. “You’re somebody I can talk to easily. I’ve told you about my problems at home. Last night was the worst. I just kept thinking about how much better it would be if I were at your house and we were just talking and sharing like we do every day.”



For Your Information

Depending on who is involved, people can see sexual harassment very differently. In one workshop, a participant told me that people were just too sensitive at work these days, and that all this sexual harassment stuff had ruined the workplace.

I asked him whether he had any daughters. He told me he had four daughters. I asked him what he would do if one of his daughters came home and told him that a man at work had groped her, called her “cutie,” and suggested that she spend the night with him.

He rose from his seat and said, “I’d go down and kill the !@*!”

The old saying “familiarity breeds contempt” applies here. When we work side by side with someone every day, we have a tendency to assume that we can say almost anything to that person. Sometimes, because they have shared things with us about their personal lives, we assume we can be more open with them than we are with others.

Many people—but not all—want to be a friend and help in any way they can when a coworker is having personal problems. But for all of us, there is a line at which we say, “I just don’t want to get that involved in your personal life.”

Many sexual harassment claims result from one person assuming that a friendly coworker is ready, willing, and able to get involved in their personal life. Recently, a human resources manager told me that when she had analyzed sexual harassment claims in her company, she was surprised to learn that the one constant in every case was that the perpetrator was a man who

was experiencing problems at home or who was going through a divorce. In each case, the man shared his problems with a female coworker. When the coworker showed concern, the male employee mistook it as an invitation to pursue her on a personal or romantic basis. When that line was crossed, the female “friend” saw the behavior as harassment.

Sexual Harassment and Female and Male Perspectives

More and more literature suggests that men and women sometimes see things differently. We often do the same things in different ways. We even communicate differently. For example, in sexual harassment workshops, I often go through the following sequence with participants:



Mike	I know this will surprise you, but I have observed that women sometimes tell dirty jokes.
Participants	(Nervous laughter)
Mike	Who do many women tell their jokes to?
Participants	(Pause) Other women.
Mike	Which other women?
Participants	Their close friends.
Mike	And where do they often tell these jokes?
Participants	In private!
Mike	Who do men tell dirty jokes to?
Participants	(Loud and unanimous) Everyone.
Mike	And where do they tell them?
Participants	(Louder) Anywhere!!!

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● Why Is Sexual Harassment an Issue?

These differences often go unnoticed until it is too late. We use convenient excuses like, “Oh, that’s just the way he (or she) is,” to overlook what someone says or does. We use these excuses, that is, until the behavior crosses the invisible line beyond which we suddenly consider the behavior inappropriate or intolerable. Then we avoid the person or even complain about him or her to someone else. Here are a few examples:

The Greeting Hug

Men sometimes see women hugging when they greet and assume that both of the women like to be hugged. But when a man tries to hug one of the women, he often finds that his assumption is wrong. Likewise, a woman may assume that a hug shows a man he’s part of her group. He, however, may read the hug as an invitation to pursue her romantically. He may also be offended.

Many women see terms like “honey” or “sweetheart” as put-downs.

The Term of Endearment

Some men use terms like “sweetheart” or “honey” when they talk to women. These men may see such terms as complimentary, but many women see them as put-downs or condescending. Likewise, when women sometimes use a term like “hunk” to describe a man, some men hear the term as an invitation to pursue a personal relationship with the woman.

The Personal Compliment

Personal compliments can get us into all kinds of trouble at work. For example, a man might say, “Magaline (pause, breath), you really look nice today.” Magaline may be thoroughly offended by this comment. She might interpret it as suggestive or sexual. The complimenter would probably be surprised. If he had listened carefully, however, he probably would have found that when Magaline’s female friends compliment her, they are very specific. For example, they might say, “Magaline, that’s a lovely dress. Is it new?” To Magaline, there is a world of difference between the two compliments. She took the first one as a comment about her as a person; she took the second as a compliment about her wardrobe.

The difference between how men and women see things is probably one of the greatest contributors to incidents of workplace sexual harassment. One way for us to reduce sexual harassment claims is to increase education and discussion on the differences and similarities between how men and women see things. By sharing and learning, we can anticipate the impact of our comments and behaviors and prevent them from being misinterpreted.

The Productivity Problem

- “This is a really important project,” thought Lee. “The company needs me to concentrate on it 110 percent. But how can I concentrate when she keeps hitting on me? Besides, her management bonus depends on this project getting in on time and under budget. How can I get any help when every time I go in there, she tells me to sit on her desk and puts her hand on my leg? I hate it. Each time it happens, I can’t work for the next 30 minutes.”

Today’s jobs require employees to be creative and innovative and to possess both customer service skills and technical knowledge. They demand careful, deliberate thinking on the part of every member of the workforce. If the workplace is tainted by harassment or sexual harassment, people often find it difficult to concentrate and focus. An organization that creates and maintains a positive, harassment-free environment will reap generous returns from its workforce.

Most employees want to do a good job. They come to work willing and able to do even more than they’re asked to do. Then it happens. A dirty joke is told, a term of endearment is used, a suggestive remark is made, or an unwelcome touch is taken. A seed has been planted. The recipient becomes a little more cautious and a little less receptive with each encounter thereafter.

Men may see such comments and behaviors as friendly and harmless; women may see them as offensive or suggestive. When the behaviors go unchallenged, men often assume that they’re acceptable or even encouraged. Many women would not say anything for fear of reprisal, ostracism, or appearing to be “a

If the workplace is tainted by harassment or sexual harassment, people often find it difficult to concentrate and focus.

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● Why Is Sexual Harassment an Issue?

Each time we are offended at work, we (male or female) become a little more skeptical and wary. The more it happens, the more we think about it. The more we think about it, the less productive we become. Eventually, one of three things happens: We find another job and leave, we become a poor performer, or we file a sexual harassment claim. In all three scenarios, both the organization and the employee lose.



Take a Moment

Most of us do not even realize it when our behavior offends others. Ask a family member of the opposite sex if they can tell you about something you do that might be viewed as offensive to someone of their gender.

The proper use of power in the workplace can prevent sexual harassment. Its misuse can create it.

Abuse of Power and Sexual Harassment

There is one other issue we must consider before we explore the topic of sexual harassment in more depth. That issue is power. The proper use of power in the workplace can prevent sexual harassment. Conversely, its misuse can create it, as in the following example:

- “It was a long day,” said Addie. “Matrone is the best manager I’ve ever had. He’s fair, and he’s always concerned about how I’m doing. I didn’t even think twice when he asked me to stop for a drink on the way home. I just couldn’t believe it when he leaned over, put his arm around me, and told me that if I went to a motel with him it would help get me promoted. I’ll never be able to look at him in the same way again. I can’t trust him, and I don’t want to be alone with him.”

Matrone has confused his role as a supervisor with his personal interests. He has sexually harassed Addie by linking her job (“help get me promoted”) with a request for sexual favors (“join me at a motel”).

Power can be formal, such as a policy—something that sets the parameters for expected behavior. A policy tells people what the organization believes is right and wrong.

Formal power also comes with a job title or position. The mere fact that a person has a title gives them the power to tell others what to do. For example, most people would say that it is more difficult to confront or walk away from a supervisor telling a dirty joke than it is to walk away from or confront a coworker.

Power can also be informal. Informal power is built on relationships. When we like someone and trust them, we tend to defer to them and their wishes, regardless of the position they hold. When we are intimidated by someone, we tend to accept the informal power they exercise by avoiding them or even by doing what they want to avoid any more discomfort or humiliation.

As you read this book, you will see that sexual harassment is as much about power as it is about sex and the law. When a supervisor schedules a meeting at or near a hotel in hopes of enticing a female employee to have sex with him, he is using his formal power for personal gain. When a coworker constantly tells rude, crude, and offensive sexual jokes in the warehouse, she is using informal power to try to gain the acceptance of others.

In both cases, the use of power creates a form of sexual harassment. The question of sexual harassment and power is not a “chicken or the egg” discussion: The power comes first, and the sexual harassment comes second. If you want to prevent sexual harassment, you have to make sure that both formal and informal power are used fairly for business purposes, not personal gain.

Companies can use formal and informal power to prevent sexual harassment and create a workplace environment where everyone can be productive.

Sexual harassment is as much about power as it is about sex and the law.

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Chapter Summary

When you look at the many issues discussed in this chapter, you can see that sexual harassment is a workplace issue. History, business practice, and social change have combined to make the workplace one of the most important parts of our everyday lives. And when the environment in that workplace is uncomfortable, we are not productive.

Preventing sexual harassment is a priority in today's workplace. In order to do that successfully, a company must be proactive:

- ◆ It must adopt and enforce a clear sexual harassment policy.
- ◆ It must train managers, supervisors, and employees to understand, recognize, and prevent sexual harassment.
- ◆ It must discipline employees who violate the policy.
- ◆ It must recognize and reward employees at all levels who treat others with respect and courtesy.

Organizations that take these responsibilities seriously will save countless dollars on legal expenses. At the same time, they will be able to take pride in their productive workforces.

Self-Check: Chapter One Review

Now that you have read Chapter One, use this space to review what you have learned. If you are unsure of an answer, just refer to the text. Suggested answers appear on page 110.



1. True or False?
The Civil Rights Act of 1964, as amended, prohibits sexual harassment.
2. True or False?
All sexual harassment is unlawful.
3. List two reasons why the diversity of the workplace has contributed to the growing importance of sexual harassment as a workplace issue.
 - a. _____
 - b. _____
4. At one time, most workers were men. List two practices that were accepted in a male-dominated workplace that could lead to sexual harassment charges in a gender diverse workplace.
 - a. _____
 - b. _____
5. Give one example of how the use of formal power can prevent sexual harassment.

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Chapter *Two*

Sexual Harassment as Discrimination

Chapter Objectives

- ▶ List a variety of laws that prohibit discrimination and harassment.
- ▶ Explain the three primary forms of workplace discrimination.
- ▶ Avoid treating others in ways that they may perceive as workplace discrimination.

What Do You Think?



Garnette sat at her desk in the lobby. She loved her job as receptionist at Kids Motorhomes because it always kept her busy and let her meet nice people. Most of all, she liked being able to leave the job behind at the end of the day. That left her time to concentrate on her schoolwork. With luck, she would earn her degree in another year.

But on this day, her usual thoughtful smile slipped from her face when she looked out the front window and saw Bill Sorentino get out of his car. He was a vice president. Although she had heard the company say that a person's title didn't make any difference, she knew she had to be careful with him. Maybe, just maybe, he would pass by her this morning without saying anything. But it was Monday, and Monday never passed without his saying something. He stepped through the door and called out, "Hey, sweetheart. How was your weekend? Did you score with any of those young hunk friends of yours? Don't forget now—my bedroom is always open for you!"

She smiled and looked the other way. "Why does he do this to me?" she thought. "I wonder if he does this to any of the other women around here. I should ask some of them."

Is Garnette a victim of discrimination? Is she being sexually harassed?

Sexual harassment is a form of sex discrimination, and sex discrimination is prohibited by the federal Civil Rights Act of 1964. Discrimination occurs when one person (or a group) is treated differently from another person (or group). Unlawful discrimination occurs when the reason for the difference in treatment is related to membership in a protected group (e.g., race, sex, religion, etc.). In the example at the beginning of this chapter, Garnette is being treated differently; it's unlikely that Bill would have made those same comments to a man. At the very least, his comments make Garnette uncomfortable. They seem to occur on a regular basis; therefore, they probably create an offensive work environment for her and cross the line into unlawful sexual harassment.

Harassment as a Form of Discrimination

The Civil Rights Act of 1964, as amended, prohibits employers with 15 or more employees from discriminating on the basis of:

- ◆ Race.
- ◆ Sex.
- ◆ Religion.
- ◆ National origin.
- ◆ Color.
- ◆ Pregnancy and related medical conditions (added in 1978).

A variety of other federal laws prohibit employment discrimination. For example:

- ◆ *The Americans with Disabilities Act of 1990* prohibits employers with 15 or more employees from discriminating on the basis of an actual, previous, or perceived mental or physical disability.
- ◆ *The Age Discrimination in Employment Act of 1967* prohibits employers with 20 or more employees from discriminating on the basis of age beginning at age 40.

Discrimination occurs when one person (or a group) is treated differently from another person (or group).

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● Sexual Harassment as Discrimination

- ◆ *The Family and Medical Leave Act of 1993* prohibits employers with 50 or more employees from discriminating against employees who request or take time off for their own serious illness or the serious illness of a parent, spouse, or child. Adoption and foster care are also covered under the FMLA.
- ◆ *The Equal Pay for Equal Work Act of 1963* prohibits employers from discriminating on the basis of pay between men and women who perform substantially similar work.
- ◆ *The Immigration Reform and Control Act of 1986* and the *Immigration and Naturalization Act of 1990* prohibit employers from discriminating on the basis of citizenship.

Many states have adopted laws that mirror these and other federal laws. Some also have adopted laws that prohibit discrimination on the basis of other categories, such as:

- ◆ Sexual orientation
- ◆ Marital status
- ◆ Height and weight
- ◆ Matriculation
- ◆ Sterilization and abortion



Did You Know?

Some organizations base their policies on federal laws and the law of the state where their main office is located. If a company policy lists a protected group that is not covered by the law in your state, then your employer is voluntarily agreeing to protect that group even though the law in your state does not require it. In other cases, employers follow the law of the state where the employee is based. In such situations, the federal law and California discrimination laws would cover a California employee. Likewise, federal law and Iowa discrimination laws would cover an Iowa employee.

Discrimination in the workplace based on any of these categories or other categories protected by federal or state law is unlawful. Harassment is a form of discrimination. It can involve any of these protected categories. Sexual harassment is one form of sex discrimination.

Discrimination is not limited to hiring and firing decisions. Discrimination can occur as a result of actions taken by coworkers, visitors, suppliers, and even customers.

Take a Moment

Most people think that discrimination laws apply only to a small segment of the population. Make a list of your family members who are covered by one or more workplace discrimination laws. You will probably be surprised at the number of people in your family alone who receive some sort of protection from these laws.



Types of Discrimination

Discrimination occurs in many different forms. In fact, we “discriminate” every day. When you choose between a domestic and a foreign car, you discriminate. In this case, the law does not affect your choice; you are free to discriminate based on your own beliefs, assumptions, and biases about cars.

When you have two job applicants and only one job opening, you discriminate by hiring one person instead of the other (or by hiring neither of them). If you use job-related criteria to make your decision, you are discriminating, but your discrimination is not unlawful. However, if you base your decision on the applicant’s membership in a protected group, you are discriminating unlawfully. Unlawful discrimination is usually defined in three categories:

- ◆ Adverse treatment discrimination
- ◆ Adverse impact discrimination
- ◆ Retaliation

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● Sexual Harassment as Discrimination

In order to understand harassment and sexual harassment, you must first understand these general categories of discrimination.

Adverse Treatment Discrimination

- Enrique and Molly apply for the same job and are interviewed by Dominique. Dominique asks Enrique ten questions during his interview. She asks Molly the same ten questions plus an eleventh question: “Do you have children?”

Adverse treatment discrimination is intentional.

Molly is being treated differently than Enrique. The treatment is based on her membership in a protected group—her sex (or gender)—and it is intentional. Molly is therefore a victim of *adverse treatment discrimination*.

Remember, sexual harassment is a form of sex discrimination. Some forms of sexual harassment are intentional. If a man walks up to a woman, reaches around her back, and puts his hand under her arm to touch the side of her breast, he is acting intentionally. If a woman is asked to stop calling a man “honey” and she continues to do it, she is acting intentionally.

Adverse Impact Discrimination

When most people think of discrimination, they think of adverse treatment discrimination. In fact, you will often hear people say something like, “I don’t discriminate; I treat everyone the same.” But what they really should say is, “I don’t intentionally treat people differently based on their membership in a protected group.” Despite their best intentions, their behaviors or decisions may result in *adverse impact discrimination*, which is unintentional.

Adverse impact discrimination is

Adverse means “detrimental or negative”; *impact* means “result or effect.” When used together, the words mean that, regardless of intentions, if the result of a behavior, decision, or action is detrimental or negative to a person or a group of people, those people are victims of discrimination. For example, prior to the Civil Rights Act of 1964, many fire departments required job applicants to be at least 5' 10" tall and weigh at least 165 pounds. Their “intention” was to hire people who were strong. The theory was that firefighters had to carry ladders, move injured people, and operate heavy fire hoses.

Most people would agree that firefighters *should* be able to perform such tasks as a routine part of their job. However, the problem is that not everyone who is at least 5' 10" tall and 165 pounds is strong, and not everyone who is shorter or smaller is weak. The policy, which on the surface seems innocent and harmless, kept most women and many Hispanics, Asians, Filipinos, and other minorities from being considered for the job, even if they were strong enough to do typical firefighter tasks.

Whether fire departments meant to discriminate or not, the impact or result of their policy (i.e., hiring people who were at least 5' 10" tall) was that other people who were also qualified weren't given an opportunity to do the job. The people who were not considered were victims of adverse impact discrimination.

Just as discrimination can be unintentional, so can sexual harassment, as in the following example:

- Sean and Manfred are standing in the hallway at work, leaning against a workstation partition. Michael, a gay coworker, is sitting at his workstation on the other side. Sean and Manfred do not know that Michael is at his desk. This is not the first time they have stood at this spot in the hallway to talk and share jokes. Several of their jokes are about women.

As on other mornings in the past, Sean ends the litany of jokes with, "Okay. One more, then I have to get back to work. Did you hear about the gay guy who . . ."

"Okay, you guys," Michael interrupts. "That's enough. I'm tired of your morning parties."

"Oh, don't be so sensitive," says Sean. "We're not talking about you."

"That doesn't make me feel any better," Michael says. "Why can't you guys just respect other people as people? Why do you always have to pick on people who are different from you?"

Just as
discrimination
can be
unintentional,
so can sexual
harassment.

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● Sexual Harassment as Discrimination

Whether Sean and Manfred mean to have an impact on Michael is not entirely clear. But regardless of their intentions, their behavior at the very least creates an uncomfortable work environment for him. If the behavior continues, it will very likely create an intimidating, hostile, offensive, or uncomfortable work environment. In short, they are unintentionally discriminating against Michael by perpetrating environmental sexual harassment.



For Your Information

Sometimes people try to justify their sexually offensive remarks or behaviors by claiming that they have “freedom of speech” rights to say or do as they please. They forget that freedom of speech was never intended to give one person the right to hurt another person. Defamation, libel, and slander lawsuits protect people from being hurt by another person’s words. In addition, when we take a job, we do it voluntarily. Part of taking a job is agreeing to do the assigned work and follow company rules. One of the rules is that discrimination, harassment, and sexual harassment will not be condoned.

Retaliation

Retaliation occurs when one person holds against another person her or his right to complain about discrimination.

The third common type of workplace discrimination is retaliation. *Retaliation* occurs when one person holds against another person her or his right to complain about discrimination. Retaliation can take many forms. It can be subtle, as when coworkers avoid a person who filed a complaint, or overt, such as spray painting a vengeful message on the locker door of the person who filed a complaint.

Retaliation may be directed at an alleged victim of discrimination, at a witness, at someone who is investigating a discrimination or harassment claim, or even at a friend who helps the victim file the complaint.

- Morgan is an account clerk who is known throughout the office as a friendly, cheerful person. One day, while she is in the break room getting a cup of coffee, Harvey also walks into the room for coffee. Morgan's back is to him, but when he sees her standing there, he says, "Hey sweetheart, how are you today?"

Morgan turns around and says, "Harvey, I really wish you wouldn't call me sweetheart."

"Oh, don't be so sensitive," Harvey says. "I'm just trying to be friendly."

"Harvey, I'm really serious. If you call me that again, I'm going to talk to human resources about it," Morgan says.

"Okay, sweetheart. I'll work on it," Harvey says with a smirk on his face.

Later that day, Morgan does complain to human resources about Harvey's behavior, and he is called in and asked for his side of the story. He is told not to discuss the matter with other employees. Morgan does not tell anyone about the complaint.

The next day, many of Morgan's coworkers are cold toward her. After work, she finds the word "Fink" written on the driver's-side window of her car.

Although it is not clear that Harvey is the person who wrote the word on the window, it appears that the message is intended to make a point about Morgan's complaint—to retaliate against her. The point it makes is that it would be unwise for Morgan to continue to exercise her rights under the law.

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Chapter Summary

Most people know and agree that discrimination is wrong. When we think of discrimination, we tend to think of the protected categories that have received the most attention—those based on race and color. But discrimination affects nearly everyone in one way or another. We all have an age, a gender, a color, and a race. Many of us also have a disability. When these things are used against us, we take it personally and very seriously.

We often fail to recognize that harassment and sexual harassment are forms of discrimination.

What we often fail to recognize is that harassment and sexual harassment are forms of discrimination. The Civil Rights Act of 1964, as amended, prohibits employment discrimination (which includes harassment and sexual harassment) on the basis of:

- ◆ Race
- ◆ Sex
- ◆ Religion
- ◆ National origin
- ◆ Color
- ◆ Pregnancy and other related conditions

We also know that harassment and sexual harassment both involve intentional and unintentional behaviors. But in reality, we make decisions about our behaviors toward each other every day. When workplace decisions and behaviors are based on (or are the result of) gender, they can cross the line into sexual harassment in the form of:

- ◆ Adverse treatment discrimination
- ◆ Adverse impact discrimination
- ◆ Retaliation

We have learned to take discrimination in the workplace very seriously. As our knowledge and understanding of discrimination grow, supervisors and managers must continue to learn more about the many forms it can take in order to protect employees against unfair and inappropriate behaviors.

Self-Check: Chapter Two Review

Now that you have read Chapter Two, use this space to review what you have learned. If you are unsure of an answer, just refer to the text. Suggested answers appear on page 110.



1. True or False?
The Sexual Harassment Prevention Act of 1975 prohibits sexual harassment in the workplace.
2. Discrimination, harassment, and sexual harassment can be created by the actions of:
 - a. _____
 - b. _____
 - c. _____
 - d. _____
 - e. _____
 - f. _____
3. Adverse treatment discrimination is (circle one)
intentional / unintentional.
4. Adverse impact discrimination is (circle one)
intentional / unintentional.
5. Is this retaliation? Yes / No

Curtis walks up behind Chaquille and pokes her under each arm with his fingers. This is the only time Curtis has done something like this to Chaquille or any other coworker.

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Chapter *Three*

Quid Pro Quo Sexual Harassment

Chapter Objectives

- ▶ Define quid pro quo sexual harassment.
- ▶ Identify a variety of behaviors that result in quid pro quo sexual harassment.
- ▶ Take steps to avoid and prevent quid pro quo sexual harassment.

What Do You Think?



Juan is a production team leader on the second shift at Kids Motorhomes. He works with Lydia, a production team member. As team leader, Juan approves all new hires, signs time cards, and makes recommendations to the department manager about training for team members. The company has a well-written sexual harassment policy. All employees, including Juan and Lydia, have attended sexual harassment training.

Juan is single. Before becoming a team leader, he worked the day shift as a production team member. Back then, he often went dancing in the evening after work, but now working the second shift has cut down on his nights out.

Lydia is married. Her husband works the day shift at another company. Working different shifts has put a strain on her relationship with her husband.

One night a few months ago, the main production line was down for almost two hours. Juan talked with his team about how best to use the time. They agreed that it would be good to clean up their work area. By working together, they got the job done in about an hour and 15 minutes. Juan thanked them for their efforts and told them to take a break. Lydia stayed behind. Juan could tell something was wrong. When he asked her about it, she told him that she didn't think her marriage was going to last much longer. Juan's immediate reaction was, "Great! When you get rid of him,

we can go dancing.” Lydia was shocked. She’d never thought of dating Juan—or anyone else, for that matter. She wasn’t sure what she wanted to do right now, but she didn’t want to get involved in another relationship. She just stared at Juan and walked to the rest room, where she sat and cried for 20 minutes until Ayashi came and got her.

After that day, Juan had trouble keeping his eyes off of Lydia. He went out of his way to talk to her. He frequently put his arm around her and told her how special she was. Many times, he told her how he could hardly wait for her to be “free” so they could “get it on.” Lydia asked him several times to stop. She was quiet, but firm. There were never any witnesses. Lydia knew others were aware of the problem because they had said things to her. Ayashi tried to talk her into going to human resources. Lydia refused.

Three months after the first incident, a great opportunity came up for someone from Juan’s and Lydia’s team to join the employee architectural committee. Lydia told Juan that she was really interested in the assignment. He told her, “Getting on that committee takes a lot of extra effort. You have to be willing to put yourself out, if you know what I mean.” Lydia told him in no uncertain terms that she would not “put out” for him. Three days later, Sarah got the committee assignment.

Is Lydia a victim of sexual harassment? Yes. Her team leader, a person who has the authority to make career decisions that affect her, has made it clear that the only way she will get ahead is to go out with him. In fact, it sounds like she will need to sleep with him in order to get special assignments. In short, sex—not performance—has become the criteria for his personnel decisions. This form of sexual harassment is called quid pro quo sexual harassment.

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With quid pro quo sexual harassment, a supervisor or manager requests (or demands) sexual favors in exchange for some employment benefit.



What Constitutes Quid Pro Quo Sexual Harassment?

Quid pro quo means “this for that” or “in exchange for.” With quid pro quo sexual harassment, a supervisor or manager requests (or demands) sexual favors in exchange for some employment benefit. The employment benefit could be keeping the job the person already holds, a future promotion, a pay increase, a satisfactory performance review, or any other employment benefit. As with other forms of discrimination, quid pro quo sexual harassment can be intentional or unintentional. It can be direct or indirect.

Unwelcome vs. Voluntary

We usually assume that a dating relationship is voluntary and welcome. However, a significant number of quid pro quo cases are filed after “voluntary” and “welcome” relationships end.

Just because you do something politely and nicely does not mean that you are doing it “voluntarily.” As a child, you learned to wash the dishes when you were told to wash them. You learned that if you objected, you got a lecture or maybe even more work to do. You eventually learned that the path of least resistance was to do the dishes with a smile on your face.

Many quid pro quo sexual harassment cases evolve the same way. The employee learns that objecting to the manager’s advances is fruitless. She or he comes to believe that they must choose between giving in or losing their job. Often, paying rent and putting food on the table become more important than fighting the boss.

Although it can take many different forms, there are five general elements that create quid pro quo sexual harassment:

1. **The employee belongs to a protected group.** All discrimination claims start with the question of whether or not the victim belongs to a group that is protected by law. In the case of quid pro quo sexual harassment, the protected group is “sex” or gender. The protection comes from the Civil Rights Act of 1964 (and similar state laws). Since “sex” includes both men and women, either can be victims of quid pro quo sexual harassment.
2. **The employee was subjected to an unwelcome sexual harassment.** The question of whether or not a particular act or relationship was “unwelcome” can be difficult to answer. For example, let’s assume that a supervisor and an employee go to dinner at the end of a long day. The purpose of the dinner is to summarize the day’s events and talk about upcoming business issues. During the dinner, the supervisor leans over and touches the leg of the employee. The employee does not react and does not say anything. Was the behavior welcome or unwelcome?

The question of whether or not a particular act or relationship was “unwelcome” can be difficult to answer.

At first, you might assume that since the employee did not say anything, the hand on the leg was welcome. But if you think about it a little further, you will see the situation is more complicated than that. The hand belongs to the boss. How will the boss react if the employee asks for it to be removed? Will the boss say, “I’m sorry. I shouldn’t have done that,” and never do it again? Or will the boss remember the incident and note on the employee’s next performance review, “Pat was a team player but recently has become less cooperative”? Pat may not say anything out of fear for what the boss might say or do that would affect her employment. In short, the hand appears welcome because nothing was said. But it might be very unwelcome.

3. **The harassment was based on sex.** Quid pro quo sexual harassment is based on sex. It involves a supervisor who demands, requires, or expects an employee to participate in some form of sexual activity in exchange for a tangible job benefit or continued employment. It is directed at the victim because she or he is female or male.

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Quid pro quo sexual harassment occurs when there is a link—direct or indirect—between the behavior and the job.

4. **The harassment affected a tangible aspect of employment, such as its term (length), condition (circumstances), or privilege (rights or benefits).** Quid pro quo sexual harassment occurs when there is a link—direct or indirect—between the behavior and the job. For example, suppose a supervisor says, “If you don’t go out with me, you won’t get a nice pay raise at review time.” Assuming that the supervisor has the authority to grant pay raises, there is a direct link between the date and the job (the pay raise).

It does not matter if the threat is carried out or not. Either way, the supervisor is misusing management authority and, in the process, treating the employee differently based on his or her gender.

On the other hand, the behavior can be indirect. For example, suppose a manager is attracted to an employee. The manager has an “open door” policy: Employees are welcome in the manager’s office at any time, even when meetings are in progress. One day, the manager learns that the employee has become engaged. Soon, the employee finds it difficult to get time on the manager’s calendar and is rebuked for knocking on the manager’s door while a meeting is in progress. Although nothing is said, there is a change in working conditions for the employee that is based on the manager’s interest in having a relationship with the person.

5. **The employer knew or should have known about the harassment but took no effective remedial action.** Quid pro quo sexual harassment has been recognized by the courts for several years. An employer or manager would have difficulty convincing a court that he or she did not know it was wrong.

The employer is responsible for preventing sexual harassment. The employer is represented by its managers and supervisors. It is their responsibility to set an example for others to follow.

The employer is also responsible for communicating policies, procedures, and performance expectations to employees, including policies on harassment and sexual harassment. If quid pro quo sexual harassment is discovered, the employer and, in many cases, the offending supervisor can be held strictly liable for the actions. In other words, the organization cannot defend itself by saying that it didn't know it was supposed to prevent the behavior. Likewise, the supervisor cannot use the excuse that he or she didn't know that the behavior was inappropriate.

If a manager or supervisor carries out a threat against an employee for not granting sexual favors, he or she is openly misusing authority for personal reasons. Even though the employer has not authorized and did not know about his or her actions, the employer is liable for those actions because the role of supervisor has placed him or her in a unique position of representing the company. This liability makes it extremely important for employers to carefully select and train supervisors who understand the importance and value of treating all employees with respect and dignity.

If the actions of a manager create a quid pro quo situation, but the manager does not follow through with the threat, the employer may be able to reduce its legal exposure if it can show that it:

- ◆ Has an effective antiharassment policy in place.
- ◆ Communicated its policy to all employees.
- ◆ Established a viable complaint reporting procedure that was reasonably available to the employee and could be used without fear of retaliation.
- ◆ Conducted a timely and objective investigation that resulted in appropriate action to resolve the situation.

If a manager or supervisor carries out a threat against an employee for not granting sexual favors, he or she is openly misusing authority for personal reasons.

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Take a Moment

Making the transition from employee to supervisor requires you to reevaluate many of your past actions and behaviors. If you are a new supervisor, you should sit down and think about how you interact with others. Ask yourself if there is anything you do that an employee might interpret as a request for sexual favors. For example, is there a coworker you are close to whom you have always teased about the way she or he looks? Do you have a “friend” whom you hug every morning? Do you join in when others are sharing jokes or stories? You must be sure that your behavior in the workplace is above question. You must be sure that none of your actions can be interpreted as requesting a sexual favor from an employee.

Examples of Quid Pro Quo Sexual Harassment

Quid pro quo sexual harassment can take many forms. Regardless of the form it takes, it involves the use of power. It involves using the employee’s job in some way to gain or attempt to gain a sexual favor or advantage over the employee.

One way to think about quid pro quo sexual harassment is to replace the term *quid pro quo* with the word *extortion*. When one person extorts something from another person, he or she uses force, threats, or intimidation to get what is wanted. In the case of a supervisor or manager, threats that involve sexual favors represent a misuse of management authority over an employee.

Let’s look at a few examples of quid pro quo sexual harassment.

Sick or Refusing to Cooperate?

- A female employee was fired for calling in sick one night, even though male employees who called in sick were not fired. The employee claimed that she was fired because she refused to submit to the sexual demands of another supervisor who was a friend of her supervisor. She claimed that the other supervisor had threatened her with termination if she did not comply. The two supervisors discussed the termination either prior to or shortly after it occurred.

Is this quid pro quo sexual harassment? Yes. The employee is a member of a protected group (gender). The advances she alleges by the other supervisor appear unwelcome. They appear to have affected a tangible employment benefit (her continued employment). The supervisors have misused their authority in an attempt to gain sexual favors from the employee.

Holiday Party Fun or Quid Pro Quo Sexual Harassment?

- At the annual holiday party held at a local hotel, discount room rates are made available so people won't drink too much and then drive themselves home. Friends and family are invited as well as employees.

Mr. Camping, CEO of Kids Motorhomes, wants everyone to have a good time. As owner of the company, he also considers himself quite generous to throw a party like this. Although he appreciates the hard work everyone does, he also expects them to show their appreciation for the jobs he provides.

After a few drinks, Mr. Camping maneuvers himself next to Barbara, puts his arm around her back, and allows his hand to slide alongside her breast. Then he pulls her toward him and whispers in her ear, "Barbsie, you do great work. I've got you in mind for taking charge of the new customer service branch in Saranac Lake. I haven't made up my mind yet, but you sure could improve your chances by meeting me up in Room 1049 around 11:00 tonight." This is not the first time Mr. Camping has made such a suggestion.

Barbara does not appear at Room 1049 that night. Monday morning, Mr. Camping announces that Brett Decker will be the new customer service manager in Saranac Lake.

Is this quid pro quo sexual harassment? Based on the information you just read, it sounds like Mr. Camping had better get on the phone to his attorney. Barbara can make a very strong argument that she has been harassed. She was qualified for the job. Mr. Camping had the authority to give it to her. He made it clear that going to the hotel room would improve her chances, and then the job went to a male employee.

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Sour Grapes or “Once You Start, You’d Better Not Stop”?

- Ryan is a senior accountant. He has worked for LaGayle, vice president of finance, for five years. She is married. He is a single father. Three years ago, they entered into a consensual relationship. During the relationship, they went on frequent dates and traveled together on business trips. They also met at a local hotel on numerous occasions after work and on weekends. Throughout the three years, LaGayle promised Ryan that she would leave her husband, get a divorce, and marry him. Despite LaGayle’s promises, she did not seem to be taking any action.

During the relationship, Ryan received numerous “special” pay raises. One day, after a particularly romantic weekend with LaGayle, he arrived at work to find a brand-new state-of-the-art computer at his desk. On another occasion, LaGayle called Ryan into her office and announced that she had talked the president into giving him a company car. Then she invited him to go “car shopping and celebrating” after work.

After three years, Ryan walked into LaGayle’s office and told her that he had decided to start seeing other women. LaGayle became furious and threatened to withhold Ryan’s next pay raise. Ryan started looking for another job. He did not find one, and he was increasingly frustrated with LaGayle’s attitude. Eventually, he decided to resign and live off his retirement funds until he could find another job. LaGayle did not attend his going-away lunch.

Ryan applied to receive his retirement funds as a cash payment. After several weeks of waiting for his money, he called human resources. They told Ryan that they had been instructed to refer him to LaGayle. When Ryan called LaGayle, she told him she had his check and that if he wanted it, he could meet her at their old hotel for a “nooner.”

Is this quid pro quo sexual harassment? LaGayle and Ryan’s relationship started out as consensual. However, LaGayle’s actions appear to have moved it from a personal relationship to one based on their employee-employer relationship. Ryan can make a strong argument that he quit because LaGayle has made life miserable for him (constructive discharge) and that her decision to withhold his retirement money deprives him of a legitimate employment benefit. (By the way, withholding the check may also violate other laws.)

Who Can Create Quid Pro Quo Sexual Harassment?

An employer¹ and its supervisory employees can create quid pro quo sexual harassment. But as with most issues involving sexual harassment, determining who is an employer and who is a supervisor may not be as simple as it first appears.

An employer is generally the company that writes the paycheck. However, in today's complex workplace, the term employer can include more than just the company that writes the check. For example, many employees work for temporary help agencies. Although the agency is their employer of record, the company they are assigned to is responsible for their work assignments and, in many cases, their continued employment.

This coemployer can create liability for both employers. A similar situation exists when one employer assigns an employee to work at the location of another employer to do training, consulting, or collaborative work with the second employer.

The question of who is a supervisor can also get rather complicated. The courts have struggled with a number of quid pro quo sexual harassment cases in which the definition of supervisor made a big difference in liability.

A supervisor is usually someone who has the authority to hire and fire other employees and who is responsible for performance reviews, pay-raise recommendations, disciplinary actions, and other day-to-day decisions that affect employees. Since quid pro quo sexual harassment involves granting, jeopardizing, or removing employment benefits, the perpetrator must have the authority to take or recommend those actions.

Determining who is an employer and who is a supervisor may not be as simple as it first appears.

¹The Equal Employment Opportunity Commission Guidelines on sexual harassment state, in part, that "Applying general Title VII principles, an employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as 'employer') is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment . . ."

● Quid Pro Quo Sexual Harassment

In some cases, the person who made the threat did not have the authority to take action. As a result, the case turned out not to be quid pro quo sexual harassment. It could, however, be an instance of environmental sexual harassment (see the next chapter). A supervisor can create environmental sexual harassment just as he or she can create quid pro quo sexual harassment. In the end, the label for the harassment is not as important as the fact that the supervisor failed to follow and support company policies against harassment.



For Your Information

Sexual harassment incidents are not limited to the company building. The workplace can include many locations. For example, the workplace of a salesperson is often the customer's location. For conferences and planning meetings, the workplace might be a hotel or resort. A restaurant can be the workplace for lunch or dinner meetings. When a supervisor or manager attends a party at an employee's house, the employee's house may become the workplace.

As a manager or supervisor, you need to be aware that wherever you go with employees, it is your responsibility to support and uphold your organization's sexual harassment policies.

Preventing Quid Pro Quo Sexual Harassment

As with any other form of discrimination, harassment, or sexual harassment, the best way to prevent quid pro quo sexual harassment is to educate managers, supervisors, and employees about what it is and what they can do to prevent it. A supervisor can take many important steps to avoid misunderstandings and unnecessary liability.

Keep Personal and Business Relationships Separate

Some companies have adopted policies that prohibit managers and supervisors from dating other employees. Others just prohibit supervisors from dating people who report to them. Still others are silent on the subject, and some even encourage married couples to work together.

Regardless of company policy, it makes good business sense for a supervisor to keep personal issues separate from work. Many of us have worked for someone who had personal problems at home and brought them to work. It probably made working for the person difficult because you never knew if that person was “up” or “down.”

On the other hand, many of us have also worked for someone who never brought her or his personal problems to work. Even if that person had a long-term marriage or relationship end, coworkers were among the last to find out. The personal problem did not affect the working relationship.

As a supervisor, you should not get involved in a personal relationship at work. You need to be sure that all employees have access to you. You must be sure that everyone on your team sees you as being fair and equitable. If you are especially close to one person or a small part of the group, others may begin to feel that you are playing favorites. The people you are close to may begin to feel that they are obligated to you in some way. This is not to say that you can't have friends at work. But if you do have friends, you must be sure that those friendships do not make others feel uncomfortable or left out.

Regardless of company policy, it makes good business sense for a supervisor to keep personal issues separate from work.

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The single most important legal concept to emerge with the passage of the Civil Rights Act of 1964 is probably job-relatedness.

Make Objective Personnel Decisions

The single most important legal concept to emerge with the passage of the Civil Rights Act of 1964 is probably job-relatedness. Simply put, *job-relatedness* refers to making decisions about people that are based on the job and how the job is done. It seems like a simple principle, but it is amazing how many times it is forgotten.

An effective supervisor makes every personnel decision on the basis of objective, job-related criteria. Hiring decisions are based on a careful comparison of defined job qualifications and the applicants' backgrounds. Performance reviews are written based on specific examples of work performance. Discipline is based on an objective investigation of the facts to determine whether a rule has been violated or a performance standard not met.

When a supervisor ties a personnel decision to a personal relationship or a sexual favor of any sort—whether directly or indirectly—he or she is immediately outside of the box of job-relatedness and is moving quickly into the box of quid pro quo sexual harassment.

All of your decisions and actions with employees must be job-related. You must work to separate your own personal feelings and beliefs from your professional and business responsibilities.

Consider the Cost vs. the Benefit

The cost of sexual harassment is often defined in terms of big-dollar court settlements. However, the real cost is usually much greater than that. In fact, the vast majority of cases never even make it to court; most are resolved internally, through an administrative agency, or prior to a trial. The *real* cost is the emotional trauma suffered by the people involved.

The victim suffers through hours of frustration, hurt, and anger as she or he struggles with the inappropriate suggestions or actions of the supervisor. If and when she or he files a complaint, the perpetrator experiences tremendous anguish and remorse as his or her reputation is questioned or permanently tarnished. Coworkers suffer through the many embarrassing moments that occur when one person tries to gain power over another. The productivity that is lost to hallway gossip alone can be immeasurable. The organization suffers from the time, effort, and energy it takes to investigate and resolve claims.

Avoid Compromising Situations

“Think ahead” would be a great title for a supervisory handbook on sexual harassment. The more you anticipate the problem, the less likely you are to have it. Before you make any sort of suggestive remark, think about whether or not it will be interpreted as having a link to the job security of the person to whom you are speaking. Whenever possible, meet with groups of people in open or public settings. Leave the doors to your office and conference rooms open unless they absolutely need to be closed. Greet people with a handshake, not a hug.

If you have to travel with someone who reports to you, meet in the lobby of the hotel. Eat in public restaurants that do not have an inappropriate or intimate decor or atmosphere. When you are on a plane or traveling by car, keep the conversation focused on work or other nonpersonal topics.

Set the Example

More than one supervisor has been saved from a frivolous quid pro quo sexual harassment claim by other employees who came forward and said that they had never observed inappropriate behavior by that supervisor. Conversely, many supervisors have found themselves with serious legal problems because after one person came forward, others lined up to tell similar stories.

Understand that in your role as a supervisor, everything you do and say is open to scrutiny. The more positive your image—the more you “walk the talk”—the less likely it is that you will be accused of inappropriate behavior.

The more you anticipate sexual harassment, the less likely you are to have it.

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Quid pro quo sexual harassment is about power.

Power Is the Issue

Quid pro quo sexual harassment is about power. When a supervisor puts an employee in the position of having to choose between loss of job security and sex, the supervisor is misusing the power that comes with the responsibility of leadership. When a manager ends a relationship with an employee and then withholds pay raises, the manager is misusing power. The circumstances, the situations, and the examples may change, but the one thing that remains constant is the misuse of power.

As a supervisor, you should:

- ◆ *Never* place yourself in a position in which it might appear that a decision or action you take is in any way tied to sex, sexual behavior, or a sexual relationship with one or more employees.
- ◆ *Always* use objective information and make bias-free decisions.

Chapter Summary

Quid pro quo sexual harassment is often the most visible form of sexual harassment. Political leaders have fallen because of it. Movies and television shows have been made about it. Newspapers and magazines all across the country report on it every day. It is certainly no secret that quid pro quo sexual harassment is against the law, yet it continues to occur.

The fact that people are sexually attracted to each other will not go away just because somebody passes a law. People will still be attracted to one another, fall in love, and enter into and fall out of relationships. The law cannot prevent that. The law can, however, insist that people behave professionally at work. It can demand that employment decisions be made on the basis of objective, job-related criteria. It can insist that managers, supervisors, and team leaders use their power to make decisions fairly and equitably.

The managers and supervisors who avoid quid pro quo sexual harassment are the same ones who treat each employee as an individual. You can do the same. Just keep these important points uppermost in your mind:

- ◆ Make sure that each employee has access to you for information and guidance.
- ◆ Keep your personal life separate from your professional life.
- ◆ Choose meeting places that are appropriate business settings.
- ◆ Make respect and trust part of your daily routine.
- ◆ Use language that is generally accepted by people of either gender and that is suitable for all ages.
- ◆ Never assume that an employee welcomes suggestive, sexual, intimidating, or offensive behavior.

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Self-Check: Chapter Three Review

Now that you have read Chapter Three, use this space to review what you have learned. If you are unsure of an answer, just refer to the text. Suggested answers appear on page 111.

1. Define *quid pro quo sexual harassment*.
2. True or False?
Quid pro quo sexual harassment must be unwelcome and involuntary.
3. Is this quid pro quo sexual harassment?
Yes / No (circle one)

A supervisor asks an employee to go to dinner with the supervisor and a client. The client and the employee are of the same gender. During dinner, the conversation gets around to family and children. The supervisor is single and talks about wanting to have children someday.

4. A supervisor can usually avoid potential claims of quid pro quo sexual harassment by (pick one):
 - a. Being friends and going out drinking with the entire work team.
 - b. Dating an employee but keeping the relationship quiet.
 - c. Keeping his or her personal and business lives separate.
 - d. Prefacing suggestive remarks with, "Now remember, this doesn't have anything to do with your job, but . . ."

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Chapter *Four*

Environmental Sexual Harassment

Chapter Objectives

- ▶ Define environmental sexual harassment.
- ▶ Identify a variety of behaviors that result in environmental sexual harassment.
- ▶ Take steps to avoid and prevent environmental sexual harassment.

What Do You Think?



Joan knew this was going to be an awful flight even before the plane left the gate. She loved her job as a flight attendant, but on some flights, it was difficult to remember why. This flight was one of them. It started with the vegetarian passenger who was offended by the smell of a hamburger brought onboard by a seven-year-old. It turned even stranger when a passenger tried to carry on two suitcases and a king-size pillowcase filled with clothes. When Joan told the passenger that she could have only two regulation-size carry-ons, the passenger argued that the pillowcase didn't count!

Then Mr. Loud and Mr. Obnoxious showed up. As frequent fliers, they sat in the first-class cabin where she was working. When Mr. Loud stepped onto the plane, he exhorted, "Charlie, we got a real babe for a stew tonight." Mr. Obnoxious never missed a beat. He responded, "Hey, sweetheart, are you going to take gooooood care of us tonight?" His eyes roamed up and down her body. "What can you do?" thought Joan. "They're frequent fliers, the best customers we have. At least it's only a three-hour flight."

Is Joan a victim of sexual harassment? Yes. It is not, however, the *quid pro quo* sexual harassment we discussed in the last chapter (her boss is not demanding sexual favors in exchange for her job). Instead, she is a victim of environmental sexual harassment. For Joan, the airplane is her workplace. The attitudes, comments, and behaviors of the people in her workplace (coworkers, customers, vendors, and suppliers) contribute to her environment. Although it is clear that Joan is a victim of environmental sexual harassment, it is not yet clear if she is a victim of *unlawful* environmental sexual harassment.

What Is Unlawful Environmental Sexual Harassment?

Unlawful environmental sexual harassment is defined by the EEOC guidelines as:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when . . . such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.²

Interpreted literally, the EEOC guidelines could be read to say that no sexual conduct or behavior is allowed in the workplace. However, notice that the criteria for determining whether the behavior is unlawful is that it creates either:

- ◆ An unreasonable interference with the individual's work performance.

OR

- ◆ An intimidating, hostile, or offensive working environment.

²EEOC Guidelines on Sexual Harassment 29 CFR §1604.11

● Environmental Sexual Harassment

Environmental sexual harassment can be created by a single incident or by a series of incidents.

In a perfect world, we would create a workplace in which there is no foul language. There would never be a slip of the tongue or an inappropriate comment about how another person looks. People would not talk about each other or start rumors. The EEOC guidelines seem to recognize that this will probably never happen. They set a fairly high standard by using words such as *unreasonable*, *intimidating*, *hostile*, and *offensive*. There is a fair amount of room between innocent mistakes and the standard set by the guidelines.

Environmental sexual harassment can be created by a single incident or by a series of incidents. A coworker sitting at his desk with his zipper undone and no underwear creates an offensive working environment. A coworker who calls someone “sweetheart” once would not; a coworker who calls someone “sweetheart” on a regular basis would.



The XXX Truck

At one company, an independent trucker backed his tractor-trailer up to the loading dock. When the forklift operator drove the first pallet into the truck, she was shocked to see that it was wallpapered with obscene pictures. She backed out of the trailer and went to her team leader. He told the driver to remove the pictures. The driver told him to “get a man to do a man’s job.” The team leader responded with, “She’s a member of our team. Either she loads it, or no one loads it.” The driver drove his truck to the end of the parking lot and removed the pictures.

Environmental Sexual Harassment

A number of factors come into play in determining whether environmental sexual harassment has occurred. Some of the most important are:

- ◆ Whether unwelcome physical conduct such as touching, groping, grabbing, or hugging took place.
- ◆ Whether offensive visual materials such as pictures, posters, screen savers, or wall drawings were displayed in the workplace.
- ◆ Whether there were inappropriate verbal comments—such as references to another person's body, shape, or appearance—or jokes, stories, or suggestive or lewd comments.
- ◆ How often the behavior took place.
- ◆ Whether the person who exhibited the behavior was a supervisor or coworker.
- ◆ How blatant or offensive the behavior was.

As you can already see, the question of whether environmental sexual harassment has occurred is a complex one. Each case is unique and involves at least two sides to the story. There is only one way to prevent environmental sexual harassment, and that is to set high standards of interpersonal conduct between coworkers and the people they contact during the workday.

The question of whether environmental sexual harassment has occurred is a complex one.

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The *reasonable person standard* considers how a reasonable man or woman would view the victim's experience.

The Reasonable Person Standard

One of the most critical sexual harassment issues is deciding whether a particular behavior or series of behaviors was intimidating, hostile, or offensive. Normally, when a person files a formal complaint, that person believes that he or she has been subjected to intimidating, hostile, or offensive behavior. But some people are so sensitive that they consider nearly everything said to them offensive, especially if they dislike the speaker.

Other people are the exact opposite. They are not offended by even the most vulgar comments or behaviors. In fact, when someone else says or does something that most people would find offensive, they contribute examples of their own that are even more vulgar than the first comment.

To deal with these different standards for offensiveness, some courts have developed the *reasonable person standard*. They decide cases on the basis of how a “reasonable” woman or man (depending on the gender of the victim) would view the victim's experience. The reasonable person standard seeks to eliminate the extremes that may exist between individuals who are too sensitive or too insensitive to the problems of sexual harassment.



Take a Moment

Check with your legal counsel to find out whether the reasonable person standard is used in your jurisdiction. In some courts, the standard that is used is based on how the victim perceived the behavior. (Note: At one time, courts used the “reasonable man” standard.)

Types of Environmental Sexual Harassment

Environmental sexual harassment can occur in many different ways. The three most common are:

- ◆ Verbal
- ◆ Physical
- ◆ Visual

Environmental Sexual Harassment Based on Verbal Harassment

The word *verbal* means words. Words can appear in two forms—spoken and written. Words can be complimentary, they can be neutral, or they can hurt. Words can mean one thing to one person and a completely different thing to another. Some people are too word-sensitive. Others are almost totally insensitive to the words they hear and use.

Verbal harassment can also include a variety of sounds. Whistling, grunting, groaning, moaning, and other suggestive noises can create environmental sexual harassment. Let's examine some of the ways that words can create environmental sexual harassment.

Words as Labels

Words can create environmental sexual harassment when they are used as labels. Throughout our lives, we are labeled in many different ways—with our given name by our parents at birth and then later perhaps with a nickname. We are referred to as young or old, short or tall, male or female, and a lot of other things. Most of these labels are simply part of everyday life—we accept them for what they are and don't spend our time worrying about them.

We are also given labels at work. You may be labeled as an associate, an employee, or a team member. You may be labeled as a computer programmer, a pipeline maintenance engineer, a trainee, or a trainer. Again, we usually accept these labels as part of having a job and don't spend a lot of time thinking about them.

● Environmental Sexual Harassment

In addition to the commonly accepted labels we have discussed so far, some people are labeled with words that can take on a whole different meaning in the workplace. For example, you might also be labeled as “honey,” “cutie,” “hunk,” “old timer,” or “available.” Instead of recognizing your contributions to the organization, these words label you on very personal criteria.

Personal labels in the workplace create a variety of problems. First and foremost, they stereotype people. If a female employee is constantly referred to as “honey,” her image can quickly change from that of a business professional to something approaching a sexual plaything. Most women would say that if they are to be called “honey” at all, it should only be by the closest of family members.

Another problem with labels is that they create confusion for coworkers. If Nicole hears Alison call Aziz a “hunk,” Nicole may assume that Aziz likes the label and start to use it herself. Soon others pick up on it. Pretty soon, Aziz is uncomfortable because so many people who are not close to him are calling him “hunk.”

Personal labels in the workplace stereotype people and create confusion for coworkers.



For Your Information

Is calling a person “honey” or “hunk” unlawful environmental sexual harassment? Probably not by itself. But remember, people rarely file complaints about a single incident. Rather, things accumulate. For example, Joan begins to notice that she is being called “honey.” Next she is on the phone with a customer when Juan and Eric tell a joke on the other side of her partition. Finally, Marquis whistles at her as she walks through the warehouse. Eventually, she goes to human resources to file a complaint—not just because of “honey,” but because of the accumulation of incidents.

Labels can also mean different things to different people, depending on where they grew up, when they grew up, and their cultural experiences and beliefs. For example, in some parts of the United States, the label “darling” has traditionally been very much a part of the culture. In other parts of the country, it would be considered offensive. For most African American men, the label “boy” would be seriously offensive because of its historical use as a label for slaves. A Filipino American man, however, might consider the term “boy” a normal and appropriate nickname.

A label that generates a great deal of discussion in most work groups is “girls,” as in, “Get one of the girls to take care of this.” Some women are not bothered by the label “girls.” Others are quite upset by it. Some older women might consider the term a compliment. Some professional women consider it a label that stereotypes them as second-class, subservient members of the work team.

Avoiding Inappropriate Labels

Regardless of the word, labels can and do contribute to an overall workplace environment that is hostile, intimidating, or offensive. The best way to avoid inappropriate labels in the workplace is to use the other person’s name or job title. If you need to refer to a group of people, refer to them as “the staff” or “the finance group” or some other neutral label. If you need to refer to people based on their gender, use terms such as “men and women” and “his or hers” and include references to both genders whenever possible.

As a supervisor, you should set a positive example for others by calling employees, customers, vendors, and others by their names, job titles, or other positive terms. Insist that others follow your example. If you hear someone in the workplace use a label that may be offensive to the person being labeled or to others, ask them to be more considerate of their fellow workers.

Set a positive example for others by calling employees, customers, vendors, and others by their names, job titles, or other positive terms.

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● Environmental Sexual Harassment

If others use words to label you, you should correct them; if they continue, express your concern in stronger terms. If your requests are not honored, report the other person's behavior to your manager and/or human resources department. In very serious cases, it will be necessary for you to report the inappropriate behavior the very first time you experience it.

Words as Derogatory Comments

A *derogatory comment* is one that puts a person or a group down in a negative way. The workplace abounds in such terms. For example, when someone makes a mistake, a coworker might say, "You dummy!" Depending on how it was said, who said it, and most importantly how it was received, the comment "You dummy!" can be taken as funny or as seriously offensive. On the other hand, if someone were to say, "You dumb bitch!" most people (men and women) would view the comment as inappropriate for the workplace under any conditions.

Derogatory comments are often a sign of disrespect. Putting someone down with a negative statement can be hurtful and have a long-term negative effect on the individual and his or her relationships with others. When people inadvertently make derogatory comments without thinking, an immediate apology should be given. But when a derogatory put-down is intentional, disciplinary action should be taken immediately to reinforce the policy that such comments are unacceptable.

Men and women sometimes view derogatory comments very differently. For example:

■ Danielle is meeting her friend Fauntelle for lunch. They have not seen each other for five years. Danielle notices that Fauntelle has gained a lot of weight since they last saw each other. What do you think Danielle would say?

A. "My, you've really put on weight!"

B. "Oh, I just love your dress!"

C. "I guess the old days of trying to look like Barbie are behind us!"

A *derogatory comment* is one that puts a person or a group down in a negative way.

Danielle probably would pick “B.” Even though she’s surprised by the changes in Fauntelle, she would find a way to compliment her friend.

Let’s look at a similar example between two men.

- Ray is meeting his friend Brent for lunch. They have not seen each other for five years. Brent has lost most of his hair since they last saw each other. What do you think Ray would say?
 - A. “Whoa, chrome dome. Let me get out my sunglasses to beat back the glare!”
 - B. “Hey, what a great shirt!”
 - C. “I guess the good old days of trying to look like Elvis are long gone!”

Ray probably would pick “A.” He’d consider the teasing as a sign of friendly camaraderie.

Danielle and Ray see derogatory comments in very different ways. Fauntelle and Brent see them differently too. When derogatory comments are made between men and women or between women and men, they often are sent and received with very different intentions and interpretations.

Words as Jokes or Stories

Jokes and stories can often be offensive. For example, not long ago, a whole series of “blonde” jokes circulated in the workplace. Most of these jokes were aimed at blonde women, and all of them were derogatory. Other jokes based on gender, sexual prowess, or sexual orientation can be equally offensive in the workplace. Offensive jokes and stories can create an intimidating, hostile, or offensive work environment.

Offensive jokes and stories can create an intimidating, hostile, or offensive work environment.

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For Your Information

Jokes and stories are among the most misleading of environmental sexual harassment behaviors. People often laugh at jokes instinctively. Or they may laugh because the people around them are laughing or because they want to fit in with the group.

The person who tells the joke often interprets the laughter as a sign of support. In fact, it may encourage them to tell similar jokes and stories in the future. Many times, they do not know that their assumptions are wrong until someone files a complaint about them.

A *slur* can occur when a word is pronounced indistinctly or is used to disparage someone or put someone down.

Words as Slurs

Words also can be used as slurs. A *slur* can occur when a word is pronounced indistinctly or is used to disparage someone or put someone down. Here are a few workplace examples:

- ◆ A man talking like a woman to mimic or pantomime her.
- ◆ A man or woman lisping to imply, usually in a negative way, that a man is gay.
- ◆ A man saying under his breath as a woman walks by, “Man, look at those (you fill in the blank). Don’t they just make you want to take the afternoon off and slip between the sheets?”
- ◆ A woman saying to a friend as a man walks by, “Honey, every time he walks that pretty little butt by my desk, it ruins my productivity for 20 minutes.”

Whistles, catcalls, grunts, and groans directed at employees all fall into the category of inappropriate slurs.

How to Avoid Verbal Sexual Harassment

As you consider our discussion of verbal communication, you will likely conclude that the real issue is respect. Labeling people based on their gender (or their membership in another protected category), no matter how well-intended, is usually disrespectful. Putting someone down by using a slur or a derogatory term shows little or no respect for the other person.

Most people work hard to qualify themselves for a job. They work hard to meet or exceed the expectations of their employer, customers, and coworkers. When your work is met by negative comments, stereotypical labels, or disparaging remarks, you are naturally frustrated and hurt. If it happens repeatedly, you will probably start looking for someone to talk to about it.

So, to avoid complaints about verbal sexual harassment:

- ◆ Call people by name, job title, or other positive term.
- ◆ Avoid telling jokes or stories that are based on gender, sexual prowess, or sexual orientation. If another person tells such a joke, refuse to laugh or smile. Politely tell the other person that you do not approve of such jokes or stories.
- ◆ Use a normal tone of voice unless there is a legitimate business reason for doing otherwise. When other people yell or use derogatory terms toward another person, express your disapproval and ask them to treat you and others with respect.
- ◆ Make it clear by your own words, actions, and behavior as a supervisor that you expect everyone in your department to treat others with respect.

Labeling people based on their gender, no matter how well-intended, is usually disrespectful.

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Environmental Sexual Harassment Based on Physical Harassment

For many, physical harassment is among the worst behaviors that can create an intimidating, hostile, or offensive working environment. Most people do not arrive at work expecting their body to be touched in an inappropriate or offensive manner. When it is, they feel hurt or violated. In some instances, one inappropriate touch is enough to create an intimidating, hostile, or offensive working environment. In others, it may take a series of incidents to cross the threshold into environmental sexual harassment.

The Hug

One form of touching that can create environmental sexual harassment (and spark a good debate) is hugging. Some people just love to hug. Whenever they see you, they want to hug you. When they are introduced to someone new, they naturally give the person a hug to show that they accept them into their circle of friends. Most of us can shrug off one unwelcome hug, but if a coworker or an important customer expects a hug every morning or upon each meeting, it quickly can become unwelcome.

The Exploratory Touch

- Ron is with his coworker Letticia at a lunch that was planned to give them time to coordinate their approach to solving a complicated software programming problem. Both are single. They have worked together for three years and have shared many important professional moments together. The booth where they are seated has a long pink tablecloth hanging over the table that covers their legs. Ron is enamored with Letticia's appearance, voice, and intelligence. He moves his leg toward hers under the tablecloth. When Letticia pulls her leg away, he moves his leg toward hers again. She says, "Ron, what are you doing? Don't ruin a good thing here, okay?"

Ron is not Letticia's supervisor, so he has no control over her job. But is he potentially creating an intimidating, hostile, or offensive working environment for her by trying to touch her leg under the table?

time, and you might think that workplace rules would not apply. But are they really on their own time? The lunch was planned for work-related discussions, so in a very real sense, they are working. Letticia has told Ron that she does not appreciate his attempts to touch her leg. If he stops right there and their relationship continues as it has in the past, her environment has not become intimidating, hostile, or offensive. However, if he continues to try to touch her, or if he begins to make her job difficult or refuses to cooperate with her, he may well be crossing the threshold into environmental sexual harassment.

“Let Me Take a Look at That”

Another type of seemingly innocent touch that can create workplace discomfort takes place when one person comes to the aid of another. For example:

- Cheryl is sitting at her computer working. When something goes wrong on the computer, she blurts out, “Why did it do that?” Roberto walks up behind her to see if he can help with the problem. He places his right hand on her shoulder and leans over so that his left hand is on the table near her monitor. As he leans forward to see the computer screen, his face comes close to Cheryl’s, and his fingers press against the front of her shoulder.

Whether he means to or not, Roberto is touching Cheryl in a way that opens him up to a charge of environmental sexual harassment based on touching. In the first place, he does not really need to touch her at all. He could pull up a chair and ask Cheryl to move over so they could both see the screen. Second, Roberto may not appreciate just how unwelcome his hand is on Cheryl’s shoulder. Although he may see it as sign of friendship, she may see it as nothing more than a “cheap feel.” She also may see it as a first step to bolder advances in the future.

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The Close Quarters Brush

- Mickey and Neil are together in the coffee room—a small alcove off the conference room barely wide enough for one person. Neil is already in the room pouring a cup of coffee when Mickey shows up. She wants to get into the refrigerator but must pass between Neil and the wall to get there. She walks toward him and says, “Hey, handsome, let me squeeze by you here.” Neil pushes forward but is unable to provide enough clearance for Mickey to get by without brushing her body against his. As she moves past him, she says, “Ooh, I’ll bet you thought that was exciting.” Neil is embarrassed but says nothing; he just picks up his coffee cup and leaves the room. Mickey wonders whether she has hurt his feelings.

Open file cabinet drawers, narrow passages, small work cubicles, and a host of other workplace space constraints often cause us to come close to each other at work. But with a little bit of thought and courtesy, we can usually find a way to avoid unnecessarily touching another person. For instance, Mickey could have waited a few moments while Neil finished pouring his coffee. All she needed to say was, “Hi, Neil. How are you today? I need to get into the refrigerator when you’re done.”

Horseplay

- Barry was in the shower after a long day of loading chemicals into trucks. He was the newest crew member. He tried hard, but sometimes he reached for the wrong valve or read a number wrong.

Barry’s coworker Maria always helped and encouraged him, but Mark and Tiemo were another story. They loved to pick on even the smallest hesitation. The more they picked on Barry, the harder it was for him to learn and do his job.

Barry preferred showering at home, but the company required all employees to shower before they replaced their uniforms with their own clothes. He was almost done when Tiemo and Mark came around the corner. Barry hoped they would leave him alone, but he knew they wouldn’t. They approached with big smiles and their hands behind their backs. Before Barry knew it, Tiemo had him in a headlock. Mark’s hands were reaching for his buttocks.

“Hey rookie, are you ready for your initiation?” asked Mark.

Some might say that Barry is just going through what a lot of guys have gone through. They might say it is all in fun and part of being one of the guys. Barry's attorney would probably advise Mark and Tiemo to get used to sitting in depositions and court hearings. What used to be just "boys being boys" is very likely environmental sexual harassment today. The fact that all three participants are of the same gender does not change the fact that the behavior was:

- ◆ Unwanted.
- ◆ Based on Barry's gender.
- ◆ Intimidating, hostile, or offensive to a reasonable person.

For Your Information

In one case, a male employee was constantly approached by his female supervisor. He was happily married, had three children, and was not interested in an affair. She was ten years younger, single, and obviously interested in him.

At the end of a sexual harassment workshop, he asked me if we could talk. He told me that his supervisor always sat next to him in meetings and used every possible excuse to touch his leg. She brought him presents for every special holiday or event, including Flag Day. She even brushed against him in the hallway.

When I asked if he had reported the problem to his human resources department, he began to cry. He told me that they would never believe him and that it would make him a laughingstock among the men in the company.

His case is a needed reminder that men can also be and are victims of sexual harassment.



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● Environmental Sexual Harassment

How to Avoid Physical Environmental Sexual Harassment

The best way to avoid complaints about physical environmental harassment is to:

- ◆ Touch others only when you are invited to do so. When you do touch others, do it in a professional manner that cannot be misinterpreted, such as with a handshake.
- ◆ Stay away from tight or cramped quarters that may cause you to have to rub up against another person.
- ◆ Ask permission before touching another person in any way.
- ◆ At work, set an example for others. For instance, indicate to a person who approaches you with a hug that you prefer a handshake by extending your hand.

Ask permission before touching another person in any way.

Environmental Sexual Harassment Based on Visual Harassment

If anything symbolizes sexual harassment in the workplace, it is the pinup poster or calendar. The pinup is not new; it has been around for a long time. It was popularized during World War II when soldiers taped pictures of movie stars, girlfriends, or their wives in their lockers. After the war, these same pictures found their way into the workplace. Some companies followed suit by providing free calendars with pictures of nude, seminude, or scantily clad women to advertise their products.

Today, we view the pinup as crude and inappropriate when it is displayed in the workplace. In fact, most companies have banned them. Advertisers from tool manufacturers to beer companies have had to rethink their use of these pictures to attract customers.

Pictures, posters, and calendars that depict sexual themes can create an intimidating, hostile, or offensive working environment. Let's look at a few examples to understand how a simple picture can create a legal nightmare for your company.

“She’s My Wife, For Goodness Sakes”

- A manager received a very special present from his wife on Valentine’s Day—a picture of her taken at a “boudoir studio.” It showed his wife lying on a bearskin rug wearing a see-through negligee. He brought the picture to work and placed it behind his desk. When his assistant complained about it, he told her that he was entitled to have a picture of his wife in his office.

Was the manager right? No. The office is not actually his office—it is a company office where other people also go to conduct company business. The company is responsible for creating a workplace environment that is free of harassment and sexual harassment. The picture clearly had a sexual connotation, and the manager’s assistant complained about it. The best thing for this manager to do is to take the picture home and enjoy it there.

A simple picture can create a legal nightmare for your company.

“It’s Just a Screen Saver”

- Some employees at a chemical plant bought a screen saver for the plant computer. The one they bought displayed attractive young women in thong bikinis. The female plant operators—all of them—complained about the screen saver. The men countered that it was set to come on only after the computer was idle for 45 minutes, something that rarely happened.

Were the men right? No. The plant computer is a piece of company equipment. It is there for the use of all plant operators. The fact that the screen saver came on only after 45 minutes of computer inactivity may minimize the harm done, but it does not eliminate it. Again, the company is responsible for creating a harassment-free workplace. The screen saver should be removed.

The Bathroom Gallery

- A company president decided to get in step with the times. His company’s products were traditionally sold to companies who employed mostly men. For years, his advertising included nude or seminude women. As his customers began to hire more women, they complained about the advertising and posters. Even though the president ordered the marketing department to come up with a new approach, he just could not part with the old advertisements. So he had the maintenance department frame the most popular posters and hang them in the men’s rest room.

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● Environmental Sexual Harassment

Is this visual harassment? At first glance, you might conclude that it is not visual harassment. You might say that only men go in the rest room, and they would not be offended by it. However, keep in mind that the company is required to create a workplace that is free of intimidating, hostile, or offensive sexual material. What would happen if a man did complain? What if a woman complains about another form of sexual harassment and her case is appealed to the president? Could the president render an objective opinion on the case?

Our advice to the president? Take the pictures down. While, technically, the president might be able to get by with his pictures, their presence is known throughout the company. They send a message that management does not take its own sexual harassment policy seriously.

Other forms of environmental sexual harassment based on visual materials are drawings on bathroom walls, posters of scantily clad models (male or female), and paintings that depict sensual or sexual scenes. A relatively new form of visual sexual harassment is the use of the Internet or e-mail to send or exchange inappropriate messages or materials.

How to Avoid Visual Environmental Sexual Harassment

Of all the forms of sexual harassment, visual sexual harassment is probably the easiest to prevent. It is fairly easy to publish a policy that prohibits the display of sexual materials in the workplace. It is also easy for supervisors to walk through employee work areas periodically to identify materials that could be considered objectionable and make sure they are removed. If they reappear, disciplinary action should be taken against the people who display them. Here are other steps you can take to prevent visual sexual harassment:

- ◆ Communicate to employees that the company sets high standards for building appearance in order to maintain its image with customers, suppliers, and employees.
- ◆ Provide tasteful artwork for offices and hallways.

- ◆ Explain to vendors and suppliers that suggestive pictures and calendars are unacceptable and will be returned.
- ◆ Ask managers and supervisors to apply a higher standard to the pictures and items in their offices and to set a positive example for others.

Chapter Summary

Environmental sexual harassment—whether verbal, physical, or visual—must be addressed and stopped as quickly as possible. As a supervisor, you have the power to prevent environmental sexual harassment:

- ◆ Interrupt a person who is beginning to tell an inappropriate joke, and explain that it would be better to save the joke for another time outside of work.
- ◆ Counsel employees who make minor transgressions.
- ◆ Take serious disciplinary action against individuals who commit major violations.
- ◆ Personally remove inappropriate visual materials as soon as you become aware of them.

You can also help your staff stop environmental sexual harassment by asking them to talk with each other about what they consider to be appropriate and inappropriate workplace behavior. Encourage them to speak up when someone does something offensive and to ask the person not to repeat the behavior.

Most importantly, you can send a strong message that you want to hear about sexual harassment problems when they occur. When someone comes to you with a problem, take that person's concerns seriously, get help from your human resources or legal department, and resolve the problem as quickly as possible.

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Self-Check: Chapter Four Review

Now that you have read Chapter Four, use this space to review what you have learned. If you are unsure of an answer, just refer to the text. Suggested answers appear on page 111.

1. Define environmental sexual harassment.

2. Environmental sexual harassment can be created by (check those that apply):

- ☐ Coworkers
- ☐ Vendors
- ☐ Suppliers
- ☐ Customers
- ☐ Managers
- ☐ Repair people

3. True or False?

Environmental sexual harassment is a problem only because some people are just too sensitive.

4. True or False?

Advertising materials are exempt from sexual harassment requirements because they help companies generate business.

Notes

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Chapter *Five*

Preventing Sexual Harassment

Chapter Objectives

- ▶ Assist your organization in implementing steps to help employees prevent sexual harassment early in their work experience with you.
- ▶ Take steps to reinforce the importance of an antiharassment policy, and support it in conversations with employees and other managers.
- ▶ Respond to comments from others who question the value or seriousness of your organization's sexual harassment policy.

What Do You Think?



Case Study

Frank was driving home from work. His wife, Wilhelmina, had started a new job that morning. She had quit her last job because her boss would not stop making suggestive remarks to her. She had been out of work for three months. It had put a dent in their family finances, but Frank fully supported her decision. He was glad that she was back at work because he knew that it was important to her. He wondered how her first day on the new job had gone.

Wilhelmina's car was already in the driveway when Frank drove up to the house. The only other time she had ever gotten home before him was the day she quit her old job. He didn't know if it was a good sign or a bad sign for her to be home first tonight. He got out of the car hoping for the best. Wilhelmina came out to meet him in the driveway. They hugged each other for an unusually long time.

“Don’t keep me waiting,” he said. “Tell me how your first day went! Did you make the right decision? Is it going to be a good situation for you?”

Wilhelmina smiled at him. “You won’t believe it,” she said. “First off, my boss met me at the door this morning. He spent the first two hours talking to me about my job. He asked me lots of questions and took time to listen to what I had to say. He introduced me to everybody. At 10 o’clock, he took me to the break room. All my new coworkers were there. They were wearing name tags. They actually threw a small party for me. Even the company president was there. She stood up without notes and told everyone about my job history and what I’m going to do for the company. I felt like she’d been a friend for years.”

“Wow! That sounds great,” said Frank.

“You haven’t heard the best part yet,” Wilhelmina said. “After the party, I was introduced to Nicole, one of my coworkers. She’s been assigned to help me get used to my new surroundings. She took me to lunch. She told me she’s worked for the company for five years. She plans to stay as long as she can. She told me she’s never worked for a company where there’s as much respect for people. She said they have zero tolerance for discrimination, harassment, and sexual harassment. She said they go out of their way to help women and minorities participate in all phases of the business on an equal footing with white men. If half of what she said is true, I’ll feel like I’ve died and gone to heaven!”

“That is so great,” said Frank. “I’m really happy for you, and for us. I know it’s going to work out for you. I think you did the right thing quitting your old job and taking your time to find this one. Congratulations.”

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Send a strong message to every employee that sexual harassment is unacceptable.

Sending a Strong Management Message

The most important step an organization can take to prevent unlawful sexual harassment is to send a strong message to every employee that such behavior is unacceptable. The message must be:

- ◆ Sent early in each employee's career.
- ◆ Delivered on a regular, ongoing basis in many different ways throughout each employee's career.

Let's look at each element of this preventive approach.

Conducting the New-Employee Orientation

A new employee needs to learn many things during the first few weeks and months on the job. One of them is how the organization and his or her supervisor expect people to deal with each other at work. In many organizations, new employees are required to watch a videotape or take a computer-based learning program on sexual harassment during their first day or week on the job. Within the first six months, the new employee is required to participate in a classroom training session on sexual harassment. In addition, during the first week, the supervisor sits down with the employee and talks about how the employee should expect to be treated and how the employee should treat others. The supervisor takes time to explain company policies and her or his personal expectations. The next page shows a checklist for a supervisor to follow for this discussion.

Discussion Checklist: Employee Respect	
<p>To the supervisor: This checklist is a handy guide to use when you talk with a new employee about our standards for employee respect in the workplace. Use it as an outline to help each new employee understand how he or she should expect to be treated here and how the company expects him or her to treat others.</p> <p>To the new employee: As part of your orientation to our organization, it is important for you to know how we expect others to treat you as you do your job. It is also important for you to know how we expect you to treat others. This checklist is a guide that you and your supervisor can use to talk about respecting others in the workplace. We encourage your questions about these issues, now and at any time during your career with us.</p>	
Discrimination	Discrimination based on race, sex, religion,sexual orientation national origin, color, disability, or any other protected category is prohibited. Discrimination includes treating others differently, intentionally or unintentionally, because of their membership in one of these protected categories.
Harassment	Harassment based on race, sex, religion, sexual orientation national origin, color, disability, or any other protected category is prohibited. Harassment may be verbal, physical, or visual. Whether intended or unintended, it often offends or hurts other people.
Sexual Harassment	Sexual harassment of any type is prohibited. This is true whether it involves a supervisor or manager who directly or indirectly requests or demands sexual favors in exchange for job security, or whether it involves coworkers, visitors, customers, or others who tell sexual jokes or stories, display sexually suggestive materials, make suggestive remarks, or engage in other behavior of a sexual nature.
Retaliation	Retaliation is prohibited. Retaliation occurs whenever a person or a group “gets back at” another person or holds it against that person when he or she exercises the right to file a complaint about discrimination, harassment, or sexual harassment.
Reporting Concerns or Problems	We encourage employees to report their concerns or problems about discrimination, harassment, or sexual harassment. Problems may be reported to your supervisor, your manager, or the human resources department (Mary Perkins at ext. 2234 or Juan Dominguez at ext. 2235).

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Organizations that do the best job of preventing sexual harassment complaints work at it all the time.

Ensuring Ongoing Communication

Organizations that do the best job of preventing sexual harassment complaints are the ones that work at it all the time. They find ways to communicate their stand against inappropriate behavior in the workplace on a regular basis. Some of the techniques are:

Draft Strong Policies

Policies tell members of the organization what they are expected to do. They establish parameters for behavior. They don't solve problems. They do set the rules.

Organizations that prevent sexual harassment have well-written policies that are easy to understand. Often, they are written in a handbook and then summarized in a somewhat smaller pamphlet or perhaps even in a brochure. The policy is reissued at least once a year to every employee. Supervisors talk about the policy periodically at staff meetings. In short, the policy is an ongoing, active part of the way the organization does business.

An effective sexual harassment policy clearly defines inappropriate behaviors. It encourages employees to come forward with their concerns at an early stage. It provides both a female and a male contact for them to talk to. It makes clear that employees can—but do not have to—go to their supervisor with their concerns. It assures them that there will be no retaliation. Most importantly, it promises a timely, objective investigation.

Walk the Talk

These organizations also go out of their way to let employees and others know that they will not tolerate sexual harassment. Their managers and supervisors always go out of their way to call employees by their names; if they do not know a person's name, they ask for it. They also refer to groups of people with gender-neutral terms such as job titles or department names. When they plan employee celebrations, company dinners, and other events, they hold them only in professional environments in which both men and women can participate and feel comfortable.

Give Feedback on Performance

We tend to do what we are rewarded for doing. Harassment-free organizations reward people who support their values. They celebrate them in many ways. They reinforce specific positive behaviors with performance reviews. They provide employees with opportunities to speak on behalf of the organization. They raise the visibility of such employees throughout the organization.

Harassment-free organizations reward people who support their values.

Those same organizations are seriously blunt in dealing with people who do not support their values of fairness and respect. When someone crosses the line and commits an act of sexual harassment, these organizations immediately investigate. The investigation is objective, accurate, and complete. If a violation of company policy is found, they take serious corrective action up to and including termination to reinforce the importance of their policies.

Take a Moment

Training is an important part of any effective program to prevent sexual harassment. As a supervisor, you need to support employees who attend sexual harassment training programs and attend them yourself from time to time. Encourage your employees to clear their calendars so they have time to attend. Meet with them after the program and ask them what they learned. Let your people know that you support the organization's policy against sexual harassment.



Practice Timely Problem Solving

- “Everyone knew he had a foul mouth, but nobody did anything about it until Keisha complained.”

Organizations that want to prevent sexual harassment do not wait to be told about a problem. They stop behaviors before they become problems. If someone—regardless of what position he or she holds—is behaving in a way that others could interpret as offensive, the organization takes immediate steps to counsel the individual and, if necessary, to discipline or terminate that person.

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● Preventing Sexual Harassment

If someone does file a complaint, the organization takes it very seriously. Qualified investigators are assigned to the case, and a timely, objective investigation is conducted. In short, appropriate and timely action is taken to stop the inappropriate behavior.

Encourage Ongoing Communication

Sexual harassment-free organizations find ways to communicate their policies on a regular basis, including:

- ◆ Publishing articles in newsletters
- ◆ Putting up posters in employee break rooms
- ◆ Talking about behavioral expectations at staff meetings and company-wide get-togethers

These organizations publicly reward people who set a positive example of the expected behavior and do not tolerate those who don't.

Provide Training

Many of the behaviors people must follow to prevent sexual harassment do not come naturally. In fact, sometimes they are totally contrary to what we have observed or been taught as we grew up. They may even be contrary to what we do in other aspects of our lives when we try to be popular or well liked. They are certainly quite different from what we see portrayed on television and in movies. In fact, preventing and avoiding sexual harassment may require us to “unlearn” some old habits.

Training is critical to preventing sexual harassment—training at the time employees join the organization and throughout their careers. It is not unusual for some companies to repeat the training every two or three years. For the training to be effective, the trainer must present the information in interesting and different ways so that participants will be able to apply what they learn to real-life situations.

Training is critical to preventing sexual harassment.

Training can be as simple as handing out a pamphlet, showing a videotape, or using an interactive training program on a computer. It can be done in a classroom setting or at a staff meeting. It can even be done right on the job when a supervisor quietly pulls someone aside to point out an inappropriate behavior and asks that person not to repeat it.

Prevention of sexual harassment does not happen by hoping the harassment will not occur. It happens because the organization develops and carries out a plan. It happens because someone in the organization champions the issue in a way that helps others see how important it is. Their efforts are successful because everyone in the organization sees the business and legal value of finding ways to treat everyone with respect. Over time, respect and consideration become the expected way of interacting with people.

Prevention of sexual harassment does not happen by hoping the harassment will not occur.

Take a Moment

List three things your organization does to prevent sexual harassment.

1. _____
2. _____
3. _____

List three additional things your organization could do to prevent sexual harassment.

1. _____
2. _____
3. _____



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Responding to Excuses

People often try to justify inappropriate behavior.

An important part of preventing sexual harassment is responding to the excuses that people sometimes use to justify inappropriate behavior. All too often, people try to justify their inappropriate behavior in the workplace with a witty, sarcastic, or even sexist remark. In some cases, they may be trying to make light of an important subject. In others, they simply may not know any better. In still others, they may intentionally be trying to disparage the company policy on sexual harassment.

These excuses are often made in a group setting. The person who makes them is loud and boisterous. Sometimes the person is an informal leader in the workplace or simply someone whom everyone else is afraid to criticize.

Regardless of where they are made or who made them, these comments can constitute a critical moment in an organization's efforts to prevent sexual harassment. Everyone who hears the comments is waiting for a supervisor or manager to respond. If there is no response, the people in the room are left to wonder how strong the company's commitment to preventing sexual harassment really is. If the reaction is laughter or—worse—another comment that supports the first remark, they learn quickly that the company does not support its policies at all. But if the reaction is a calm, logical, but forceful response that harassing comments and behaviors are not condoned in this workplace, those in the room will begin to see that the company does indeed support and enforce its policies.

Let's look at a few examples of comments that people make to justify inappropriate workplace behavior:

The Hugger

- You are at a staff meeting. Someone makes a comment about people in the office being offended by too much touching. Roy responds by saying, "Melanie and I have worked together for years. She knows me and I know her. And she knows that part of being a good administrative assistant is making the boss happy. If I didn't get a good hug from her every day, I wouldn't be able to do my job."

Roy is making two huge assumptions. First, he is assuming that just because Melanie has not said anything that she is open to his expectation of a hug. Second, he is assuming that because he thinks Melanie is comfortable with a hug, everyone around the two of them is comfortable with it too. He is probably wrong on both counts. What could we say to him? How about something like this:

- “You know what, Roy. Even if Melanie is open to your daily hugs, you’re setting a poor example with your behavior. As a manager, it’s your responsibility to treat all of your staff equally. Whether you intend it or not, your behavior sends the message that, because you get to hug Melanie, she’s a privileged employee in your mind. That goes against many of our equal employment policies.”

Take a Moment

What would you say to Roy?



The Dirty Joke Teller

- The sales staff is gathering for a meeting. Phil is the last one in the room. As he walks in, he interrupts everyone by blurting out in his loud voice, “Sorry I’m late. I was on the phone with Olga out in the warehouse. She just told me a great story about the unionized house of ill repute. Since there’re no women in here, I can tell you all about it . . .”

It might be interesting to compute the cost of this particular business meeting. Phil has delayed everyone while he was listening to a joke. Do you think the stockholders would consider that a good use of company resources? Phil assumes that everyone in the room wants to hear his joke. He assumes that because there are no women in the room, he does not have to worry about the company’s sexual harassment policy. Phil’s manager needs to interrupt. What if his manager said something like this:

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● Preventing Sexual Harassment

- “Phil, excuse me. I’m going to ask you to save your joke for some other time and some other place outside of work. Jokes like the one you want to tell often demean women. As you know, Phil, in our company, we want to treat everyone with respect. Telling a joke like that is inappropriate in our workplace.”



Take a Moment

What would you say to Phil?

The Fun-Lover

- A group of employees is gathering for a sexual harassment training class. Vernita walks in the room and says, “Well, I guess all the fun is over. The morality police are here. When they finish with us, it won’t even be safe for us to look at each other. They’ll have us wearing blinders, gloves, and muzzles to keep us from saying anything remotely funny!”

Vernita is saying what a lot of people may be thinking. By saying it, she gives us a chance to explain the value of creating a workplace environment where everyone can be comfortable and contribute. How about if we say something like this:

- “You know, Vernita, I think the main reason most of us are here is to do a good job. Part of doing a good job is working with lots of different people. I think a lot of the jokes, the touching, and the looks you’re talking about make more than a few people around here uncomfortable. Most of us have a lot fun with our friends and family without doing those kinds of things. Personally, I’m more concerned about being respected at work for my abilities than I am about being able to have fun at the expense of others.”

Take a Moment

What would you say to Vernita?



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The Flag-Waver

- Barry is in the break room reading the newspaper when he leans back in his chair and says, "Look at this story. This poor guy is being sued for sexual harassment, and all he did was call some chick 'sweetheart,' 'honey,' and 'babe.' Boy, whatever happened to freedom of speech in this country?"

Barry has a point. His freedom of speech has been limited with the introduction of sexual harassment rules in the workplace. Whether he likes it or not, Barry needs to learn that, when he is at work, he must follow the rules of the workplace he has chosen. Suppose we respond to Barry with a comment like this:

- "You know, Barry, freedom of speech doesn't mean that you can say anything you want anytime you want. People get sued every day for libel, slander, and defamation of character. When people come to work, they have a right to be treated with respect. Calling people names like 'babe' is disrespectful. Besides, the rules in most companies, including ours, are pretty clear: Unwelcome sexual behavior crosses the line. That guy you're reading about probably should have known better."

Take a Moment

What would you say to Barry?



My Friend Is Being Sexually Harassed

- Amy stopped by the human resources department this morning. Her friend, Shruh Zhuu, called her at home last night for the third time this week. This time she was crying. Her boss just wouldn't take no for an answer. At the end of the day yesterday, he told her to come into his office. He was leaning against his desk with his hands in his pockets. When she walked into his office, he began massaging himself and said, "You know, this would be a lot more fun with your hands and no clothes." She ran out of the office and went home to call Amy. She made Amy promise not to tell. Amy couldn't sleep at all that night. She decided to try something.

Amy asked to see Edward, the human resources manager. She spoke quickly so she would not back down. "I have a friend who works for a guy who's a jerk. He won't leave her alone. He keeps propositioning her. He plays with himself in front of her and everything. She's afraid you won't believe her, and he'll fire her if she complains."

What would you do if you were Edward? You have only a few seconds to respond. Your credibility and the credibility of the organization are on the line. You'd better think fast. But be sure to take time to say the right thing—perhaps something like this:

- "You know, Amy, I'm glad you came to see me today. It gives me a chance to reinforce how strongly this company feels about preventing and stopping sexual harassment. We've trained our managers and our employees to prevent sexual harassment. We want to know about your friend because we want to investigate her concerns. She needs to help us by coming in and reporting what happened so we can try to help her. You can come with her, if she prefers. If necessary, we can meet outside the company. Or if she'd prefer to talk to Hue, I'll be glad to set up a meeting for her."

Take a Moment

What would you say to Amy?



As a supervisor, you need to listen carefully to what other people are saying. When you hear something that minimizes, belittles, or questions the seriousness of your sexual harassment policy, you need to speak up. You need to remind people of the policy and why it's important for everyone to understand it and comply with it.

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Preventing sexual harassment is not a one-time effort.

Chapter Summary

Preventing sexual harassment is not a one-time effort—it is an ongoing process of communicating workplace values. Every manager and every employee must understand that the organization takes its antiharassment policies seriously.

Organizations can do the following to help prevent sexual harassment:

- ◆ Draft strong company policies to address sexual harassment.
- ◆ Demonstrate by example that the company practices and enforces its policies.
- ◆ Provide early and ongoing training to help employees recognize and prevent inappropriate workplace behavior.
- ◆ Find ways to communicate your sexual harassment policies on a regular basis.

The best way to ensure a harassment-free workplace environment is to reinforce positive behaviors and confront inappropriate ones. Your goal is to prevent sexual harassment and to stop the inappropriate behavior *before* it becomes a sexual harassment complaint.

Self-Check: Chapter Five Review

Now that you have read Chapter Five, use this space to review what you have learned. If you are not sure of an answer, just refer to the text. Suggested answers appear on pages 111–112.



1. It is important to communicate the organization's stand on sexual harassment early in the employee's career because (pick one):
 - a. The law requires it.
 - b. It keeps people from filing lawsuits and saves the organization money.
 - c. It establishes an expectation that at this company, people will be treated with respect and courtesy.
2. True or False?
A well-written policy will prevent sexual harassment.
3. A sexual harassment policy is effective only if (pick one):
 - a. The actions of managers and supervisors support it.
 - b. The state has approved it.
 - c. It is signed by each employee.
4. True or False?
Sexual harassment is a new idea. Once people learn about it, they will stop doing it.
5. Mario thinks that people only file sexual harassment complaints to get rich. What would you say to Mario?

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Chapter *Six*

Investigating Sexual Harassment

Chapter Objectives

- ▶ Explain why it is difficult for employees to come forward with sexual harassment complaints.
- ▶ Explain the role of the human resources department in handling sexual harassment complaints.
- ▶ Plan for the basic steps of receiving a complaint and conducting a sexual harassment investigation.

What Do You Think?

I need to talk to you,” said Alexis as she walked into the office of Mandy McMullen, director of finance and administrative services. “I can’t take it anymore! I don’t care what happens to me. I don’t care if my husband finds out about it. I don’t care if I lose my job. I just want it to stop.”

What would you do if you were Mandy? Where would you start? What would you say?

Even worse than an incident of sexual harassment is the failure to properly investigate it. In a perfect world, we would tell people to avoid behavior that might be interpreted as sexual harassment. They would listen, and there would be no more incidents of sexual harassment. Unfortunately, our world is not like that.

A properly conducted investigation takes into consideration all sides of the case. It waits to draw conclusions until the full story is collected. It is done quickly. It is conducted as confidentially as possible. It ends with all parties feeling that they were treated fairly. It communicates a clear conclusion and reinforces the organization’s commitment to a harassment-free workplace.



Even worse than an incident of sexual harassment is the failure to properly investigate it.

Filing a Complaint Is Difficult

Before you receive a complaint or launch an investigation, you must understand some of the factors that cause people to complain. One of the most important things to understand is that most people put up with quite a bit of inappropriate behavior before they file a complaint. When somebody comes to you with a problem, they most likely have thought it through and overcome many personal and professional obstacles. They have asked themselves what might happen to them at work, at home, in their career, and in their personal life before they ever say a word to you. Despite your policies, your workshops, and your statements, this person probably has come to you only after overcoming a great deal of concern and fear.

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Most people put up with quite a bit of inappropriate behavior before they file a complaint.

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It is impossible to categorize all the possible complaint scenarios. There are, however, a few common ones we can identify:

- ◆ **“Just make it go away.”** Some victims reach a point at which their only goal in complaining is to make the problem go away. They just want you to hear them out and do something to make the other person stop behaving in an inappropriate manner.
- ◆ **“I shouldn’t have to take this.”** Other victims strongly believe that the company’s policies and the rules of modern society should protect them from having to endure any form of sexual harassment. They may come to you feeling let down and offended.
- ◆ **“I don’t care what happens to me anymore.”** In what may be the most difficult of all situations, some victims reach a point at which they no longer care about any personal consequences—even if they lose their job. They no longer care if their reputation becomes tarnished or if their family hears all of the lurid details of their case. They are desperate for someone to hear them out and help them resolve their case.
- ◆ **“This is the last time I’m going to put up with this.”** In some cases, the victim tolerated inappropriate behavior at another job. Then they left that job and went someplace else. At the second job, the behavior continued, but they needed

● Investigating Sexual Harassment

the income to survive. Finally, they left the second job. Now they work for your company. The behavior starts again. They decide that they are finally going to do something about it, and they come to you with their complaint.

This type of complaint can be among the most difficult to address. The problem at your company may in fact be very minor. You even may think the person is blowing it out of proportion. But if you stop to think about all they have experienced, you can see why the problem is so real and significant to them.

Regardless of what motivates a person to complain, you must take that complaint very seriously. In order to take the complaint seriously, you must understand that what the complainant is thinking may not be what you would normally think. You must be careful not to judge her or him by your own experiences, biases, or perceptions.

Unsubstantiated Complaints

Sexual harassment is a serious matter. Most sexual harassment complaints are based on actual or perceived incidents. The actual events may be a matter of interpretation. The events may not be serious enough to constitute unlawful sexual harassment. Nonetheless, the complaint is filed in good faith and with every intention of resolving the problem.

Unfortunately, there have been and will continue to be cases in which the alleged victim files a complaint to get back at someone or to try to make some money by winning a lawsuit. These fictitious cases, just like legitimate ones, can have serious consequences for both victims and perpetrators. They can ruin careers, destroy personal lives, and create financial disasters.

Regardless of your initial feelings, you must take every complaint seriously.

Regardless of your initial feelings, you must take every complaint seriously. You must ensure that it is fully investigated to protect both the alleged victim and the alleged perpetrator. If, after an objective investigation, a complaint is found to be unsubstantiated, the person who filed the complaint may be subject to discipline up to and including termination. In some cases, the company or the individual who was accused may pursue a legal remedy that could be very costly to the alleged victim.

Receiving a Complaint of Sexual Harassment

Who Should Receive a Complaint?

For most workplace problems or complaints, the employee goes to his or her supervisor. If the supervisor does not deal with the problem, the employee can go to the next highest level of management. However, when the perceived problem is sexual harassment, the employee's supervisor or manager might be involved. Even if the supervisor has not been involved, the employee may still hesitate to go to her or him. The employee may feel the supervisor is partly to blame for letting the problem occur in the first place.

An effective sexual harassment policy gives employees options for reporting their problems or concerns. An employee should be able to report the problem to his or her supervisor or to a higher level of management. The employee also should be able to report the problem to the human resources department or, in some cases, to the company's legal department.

You should also give employees the option of reporting problems to a woman or to a man. If you have a diverse workforce that includes a variety of cultures, employees should be able to report their concerns to someone who has at least a basic understanding of their culture.

The Role of Human Resources

Human resources is a management function—it exists to help supervisors manage people more effectively. It also exists to ensure that the organization defines rules about how people should be treated and then follows those rules. Human resources plays a major role in making sure that people decisions are made objectively and fairly.

Regardless of the size of the organization, human resources should have at least two people trained to receive and investigate sexual harassment complaints. These individuals must be able to set aside their own personal biases and beliefs to objectively collect information from victims, perpetrators, and witnesses. They must be able to evaluate information from a variety of sources and then clearly communicate their findings, both orally

An effective sexual harassment policy gives employees options for reporting their problems or concerns.

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● Investigating Sexual Harassment

and in writing. Finally, they must be able to recognize when they need more information or help from other professionals, such as an attorney, before recommending appropriate corrective action.

The human resources department must have a reputation within the organization as a bias-free place where employees can go to be heard. Even though human resources is there to serve management, employees should know that it also exists to ensure that the company's most important assets—its people—have a harassment-free environment in which to work.

If a supervisor brings a sexual harassment problem to human resources, he or she should expect to receive professional, accurate advice and assistance on the next steps to take. The supervisor also must be able to depend on human resources to handle the problem with “need to know” confidentiality. If the supervisor has contributed to the problem, human resources must help educate him or her and, if necessary, recommend disciplinary action.

Every Manager Is a Potential Complaint Receiver

In addition to the formal places where an employee can file a complaint, each supervisor or manager in the company should also be prepared to receive complaints. This can be a complicated responsibility. For example, a supervisor might be good friends with an employee who works in another department. The friend might tell the supervisor about a potential sexual harassment problem but ask the supervisor not to tell anyone about it. Since the supervisor is a member of management, and management is responsible for preventing sexual harassment, the supervisor cannot honor the request to keep quiet about the complaint.

Each supervisor or manager in the company should also be prepared to receive complaints.

The supervisor must tell the friend that the company does not tolerate sexual harassment and explain that, as a supervisor, she or he cannot hide, cover up, or ignore it. The supervisor must also explain that, because the company is now aware of a potential problem, it has to be reported and investigated. He or she should reassure the friend that the investigation will be kept as confidential as possible but that certain people in the organization will have to be told about it.

Asking the First Question

The first question you need to ask yourself when an employee brings a sexual harassment complaint to you is:

Am I the right person for this employee to talk with about this problem?

The answer to this question depends on a number of factors:

- ◆ Your company may have a policy that requires you to refer the employee to the human resources department.
- ◆ You may realize that you are somehow involved in the case and therefore cannot be totally objective—perhaps a close friend of yours is creating or contributing to the problem.
- ◆ You may be the wrong person for the employee to talk with because you are not properly trained to receive and investigate sexual harassment complaints.

If, for any reason, you are not the right person for the employee to talk with, you must take the employee to the right person in the organization to be sure that his or her concerns are properly considered and addressed.

The Role of the Silent Witness

If an employee brings a sexual harassment complaint to you, you should have a silent witness present. A *silent witness* sits on the side and carefully listens to what the employee says. The silent witness should take clear, complete notes of your conversation with the employee—not necessarily verbatim, but complete enough to let you reconstruct the conversation. At the end of the meeting, the silent witness should read back her or his notes to you and the employee so both of you can be sure the information was accurately recorded.

A silent witness sits on the side and carefully listens to what the employee says.

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What a Complainant Expects from You

When someone comes to you with a complaint, they expect you to do at least three things:

1. **Be empathic.** When an employee files a complaint, they want to talk to someone who cares about their concerns. You cannot and should not immediately agree with them, because you do not yet have enough information, and you have not heard all sides of the story. You must, however, let the person know that you care about their concerns. You can say that your organization takes complaints seriously and that you will help them get in touch with the proper person or persons to be sure that their complaint is carefully investigated and resolved.
2. **Listen.** When someone comes to you with a problem, they expect you to take it seriously and listen to everything they have to say. You must listen carefully to what the complainant says. Remove or ignore distractions such as ringing telephones, visitors to your office, or other work on your desk. Look at the person as they speak. Let them tell their story without interruption. Wait until they finish to ask any clarifying questions.
3. **Follow up.** After a complaint is filed, the complainant expects you to follow up on it. Make this follow-up a priority—do it immediately. In most cases, you will refer the problem to your human resources department. Expect nothing less than immediate attention from human resources when you call or visit. Document the fact that you referred the problem to human resources, and let the complainant know that you made the referral. If it is appropriate (depending on the advice you get from human resources or legal counsel), also check with the complainant every few days to see how that person is doing and to ask whether there is anything else you can do to help.

When someone comes to you with a problem, they expect you to take it seriously.

Conducting Your Investigation

Hearing the Complaint for the First Time

Once an employee begins explaining why they think they have been sexually harassed, you should let him or her explain the problem without interruption. Save your questions for later. Instead, you should:

1. **Let the employee release his or her emotion.** Most likely, the employee has already spent hours agonizing over whether to bring the problem to your attention. They have probably had imaginary conversations with you in their mind many times over. You want them to tell you their story in their own words, exactly the way they see it. Letting the employee go through the entire scenario without interruption allows her or him to release their emotion and reassures them that you are hearing the entire story and not just parts of it.
2. **Confirm the sequence of events.** Once the employee has told you the whole story, you will know the scope of the problem. Then you can go back to the beginning and ask questions to clarify and confirm the sequence of events. You can also ask the employee questions that will let you confirm that he or she is telling you a consistent and accurate story.
3. **Be objective.** When you force yourself to listen to the entire story without interrupting, you will be less likely to make premature assumptions about what you are hearing. You will avoid drawing conclusions before you know the “big picture.”

Hearing the Complaint a Second Time

After you have listened to the whole story from the employee, ask her or him to tell it a second time. This time, however, direct the discussion yourself. Interrupt and ask for clarification when necessary, and confirm your understanding with comments like, “I think what you just told me was . . .” Also, ask your silent witness to read from her or his notes, and have the employee reexplain anything that is unclear.

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Asking the Victim for a Solution

It is usually a good idea to ask the employee what she or he thinks can be done to solve the problem. More than one case of sexual harassment has been blown out of proportion because the investigator forgot to ask the employee what it would take to solve the problem. While the employee's solution may not always be the best solution, you should at least hear what she or he thinks would solve the problem.



Why Didn't You Ask Me?

In one case, Keisha, a marketing specialist, had attended monthly marketing association dinners for ten years. She always sat next to Phillip, a colleague from another company. After dinner, they always walked out to their cars together and parted with a hug. One night, Philip confided in Keisha that he was going through a divorce. At the end of their hug, he kissed her on the mouth.

Keisha shared the incident with her supervisor the next morning. Her supervisor called Phillip's supervisor and threatened to stop doing business with Phillip's company. Phillip nearly lost his job.

Keisha was shocked. She had confided in her supervisor as a friend, never anticipating that such a call would be made. She knew Phillip well enough to know that if she asked him not to kiss her again, he would respect her wishes. "Why didn't you ask me what I wanted done first?" she asked her supervisor.

Evaluating the Complaint

Once you have received the complaint, you need to sit back and carefully evaluate what you have heard. Do not do anything until you are sure you have a clear picture of what the alleged problem is. You may decide that you need to go back to the victim and ask additional questions. In any case, you need to carefully plan what you will do to conduct a fair and effective investigation.

One way to evaluate the complaint is to develop a matrix or chart of the information you have collected. A matrix helps you organize the information in your notes in a format that lets you easily see the issues (see the sample matrix on page 100). It helps you analyze the case. For example, you might want to include a column on your matrix for each person you interview or for information such as training, policy provisions, and postings.

One way to evaluate the complaint is to develop a matrix or chart of the information you have collected.

Interviewing the Accused Person

One of the most difficult things you will ever be asked to do is to interview a person who has been accused of sexual harassment. If you already know that the person you will be interviewing is volatile, take steps to ensure your safety and the safety of others in the area. Plan and conduct your interview carefully.

Start by explaining the purpose of your meeting. You might say something like this:

- “John, we have received a sexual harassment complaint that involves you. We are in the process of conducting an investigation. We have asked you to meet with us so you can tell us what you know about the issues we are looking into. Our purpose today is just to collect information. We also plan to interview other people before we draw any conclusions. Our investigation should be completed within the next week.”

In some cases, the accused person will be totally surprised when you explain the purpose of the meeting; you may need to give them time to compose themselves.

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● Investigating Sexual Harassment

Sexual Harassment Investigation Matrix			
Issue	Complainant	Accused	Witness #1
Touching	<ul style="list-style-type: none"> • John puts his hand on Mary's shoulder every morning and rubs it until she tells him to stop. • John put his hand on her head yesterday (12/27) and said, "I'd love to have this in my face in the morning." 	<ul style="list-style-type: none"> • Mary gets up from her desk and gives him a hug every morning. • He admitted making the comment, but only after Mary said, "I'd love to wake up next to you in the morning." 	<ul style="list-style-type: none"> • They both touch. Most of the time, it looks like John starts it. • Mary was talking to Maria in the break room about her boyfriend. John interrupted, touched Mary on the head, and said, "I'd love to have this in my face in the morning."
Epithets	<ul style="list-style-type: none"> • John calls her "sweetheart" or "honey" almost every day. • When she arrived at Kathy's going-away party, John said, "Here's the best-looking babe in the company." 	<ul style="list-style-type: none"> • Doesn't remember calling Mary "sweetheart" or "honey." • Admits calling Mary a "babe" at the party but said he was just kidding. 	<ul style="list-style-type: none"> • John calls Mary "sweetheart," "honey," or "sugar" every day. • John called Mary "babe" at the party. She asked him to stop. He called her "babe" several more times.
Leering	<ul style="list-style-type: none"> • Mary feels like John is always staring at her. 	<ul style="list-style-type: none"> • John knows she is sensitive and tries to look the other way. 	<ul style="list-style-type: none"> • Yesterday, John turned around in his chair as Mary walked by. He followed her across the room with his eyes. Any woman would have been uncomfortable.

Once you have established the purpose of the meeting, you should underscore its importance. You might say something like this:

- “John, as you know, the company takes the matter of sexual harassment very seriously. We have a policy against sexual harassment and other forms of discrimination. Our policy assures people that we will investigate complaints. We expect each person in the investigation to tell us what he or she knows about the incidents and issues we are investigating. We expect each person to be honest and to keep the information discussed in this meeting confidential.”

When you have established the purpose of the meeting and explained how important it is, you can start asking questions to find out what the person knows about the incidents you are investigating. In most cases, it is a good idea to start out with a general question such as:

- “John, the complaint we are investigating involves touching, verbal epithets, and leering. Are you aware of any behaviors or incidents of touching, using epithets, or leering that involve you and that might be seen as offensive by any of your coworkers?”

In some cases, the employee will immediately address the issues you have mentioned. When this occurs, you can follow up with questions such as:

- “Can you tell me more about that?”
- “Do you remember when that happened?”
- “Do you have any notes or receipts that would support what you have told me?”
- “Was anyone else in the room when that happened?”

In some cases, the employee will immediately address the issues you have mentioned.

In other cases, the employee will not respond or will say that she or he has no information or knowledge about the issues you are investigating. When this happens, you will need to ask more questions about the specific incidents to be sure the employee is given every opportunity to explain her or his side of the story.

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● Investigating Sexual Harassment

As you ask these questions, your silent witness should continue taking notes. It is important for both of you to remain as objective and open as possible. Remember, your goal here is to gather information, not to evaluate it. Your evaluation will come later.

Revealing the Name of the Complainant

Naturally, the employee who has been accused will want to know the name of the accuser. Before you reveal that person's name, you should consult your legal counsel. In many cases, it will be obvious who the complainant is. For example, in most quid pro quo cases, the person being accused knows immediately who the complainant is.

Check with your legal counsel before revealing the name of the person filing the complaint.

In other cases, the complainant's identity is not so obvious. For example, in many environmental cases, any one of a number of people could have come forward with a complaint. The advice you receive from your legal counsel will help you decide what to do. However, always remember that whatever you do, if the case goes to an outside agency or court, you will be depending on your witnesses to come forward and repeat their stories. To be sure the information you get from your witnesses is reliable and accurate, compare information from different sources and ask your witnesses to put their observations and experiences in writing.

Interviewing Witnesses

After you interview the complainant and the person who has been accused, you need to decide which witnesses to interview. In many cases, both the complainant and the accused person will name the same people as witnesses. It is often a good idea to start with the people who appear on both lists. You may not need to interview everyone, but you should interview enough people to convince yourself that you have an accurate and complete picture of what has or has not occurred.

Your interviews with witnesses should follow much the same pattern as your interview with the accused person. Start by explaining the purpose and importance of the investigation, then follow with general and specific questions.

Where Should You Conduct Your Interviews?

When you conduct investigative interviews for a sexual harassment complaint, think about the best place to meet with the complainant, the alleged perpetrator, and their witnesses. In many cases, the places where you normally meet—your office, the human resources department, and the executive conference room—will be the wrong places. They are often public places where others can observe what is happening and where interruptions are common. From a security standpoint, they also may be the wrong places to meet with someone who may be vindictive, irrational, or in other ways threatening.

The best place to meet is where people can come and go without embarrassment or unnecessary exposure to stares from others—a place that is free of distractions and interruptions where you can easily call for security or assistance if you need it.

If a “normal” meeting room does not meet those parameters, consider an off-site location such as an attorney’s office, a satellite office, or a conference center meeting room. Never meet in a restaurant, bar, hotel room, or other location where business is not routinely conducted.

Ensuring “Need to Know” Confidentiality

In the early days of sexual harassment investigations, investigators often promised victims and witnesses total confidentiality. In reality, there is no such thing as total confidentiality. When a complaint is filed and an investigation conducted, several people in the organization need to know about it, including, but not limited to:

- ◆ The person who receives the complaint
- ◆ The manager of the human resources department
- ◆ The company’s CEO
- ◆ The corporate attorney

You should never promise total confidentiality to someone who brings you information about a sexual harassment complaint. Be honest and say that you will keep the information as confidential as possible, but that some other people will need to know about the problem.

You should never promise total confidentiality to someone who brings you information about a sexual harassment complaint.

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Getting Written Statements

In addition to talking to a complainant, alleged perpetrator, or witness, you can also ask each person to submit a written statement summarizing what they know about the case. It will reduce the chances that people will change their stories at a later date and will give you a point of reference for questions or concerns you may develop later in the investigation.

Concluding Your Investigation

An investigation is complete when you have interviewed enough witnesses and reviewed enough records to satisfy yourself that you have an accurate picture of what occurred. At this point, you need to review all of the information you have collected. You need to carefully analyze each piece of information. You need to decide what you have learned. You need to decide whom you believe and what you have concluded from all of your information.

**Decide whom
you believe
and what you
have
concluded from
all of your**

The final step in your investigation is writing a report to summarize your findings. Address your report to the person who directed you to conduct the investigation—usually your corporate attorney. Then objectively and factually summarize your findings and explain your conclusions. Ask your legal counsel to help you structure your report.

Taking Action

When your investigation is complete, you need to make a decision: Does the information you have collected point to a violation of company policy? There are at least four possible conclusions you can draw:

- ◆ Sexual harassment has occurred.
- ◆ Sexual harassment has not occurred.
- ◆ Sexual harassment has not occurred, but inappropriate behavior has.
- ◆ The complaint was without merit.

For Your Information

You may be tempted to solve a sexual harassment problem by transferring one of the parties involved. But consider this: Transferring the victim may make it appear that the victim caused the problem. In fact, the victim did not violate the policy; he or she simply did what was expected by reporting the problem. As you plan your final action, be sure that your solution does not make the victim the problem.



If company policy has been violated, you will need to decide what, if any, action must be taken.

In serious cases—such as when a person's safety or security has been threatened—the obvious action is to terminate the perpetrator. If the violation was relatively minor—for example, inappropriate behavior that did not cross the line into sexual harassment—you may decide that counseling is appropriate. In still other cases, you may find that the complaint was totally without merit and may even have been filed solely to cause harm to the alleged perpetrator. Then you may decide that it is necessary to discipline the complainant.

Whatever your decision, the action you take must be timely and appropriate for the offense. It needs to demonstrate to the victim that you have taken his or her complaint—and company policy—very seriously.

When you have made your decision, you will need to explain it to the perpetrator and the victim in separate meetings. Be firm and factual. The perpetrator must leave your meeting understanding the following points:

- ◆ Why your policy is important
- ◆ Why you've drawn your conclusions
- ◆ What the current consequences are for him or her
- ◆ What is expected from him or her in the future

The action you take must be timely and appropriate for the offense.

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● Investigating Sexual Harassment

The victim must leave your meeting understanding the following points:

- ◆ You take your policy seriously.
- ◆ A fair and objective investigation has been conducted.
- ◆ Appropriate action has been taken to remedy the situation.
- ◆ You expect any further problems to be reported on a timely basis.

In many cases, your attorney will advise you not to tell the victim the specific disciplinary action you are taking against the perpetrator. That is because disciplinary action is normally a confidential personnel matter. If you are not able to explain the specific actions you have taken, you must make it clear to the victim that you have taken appropriate action to clearly communicate that:

1. The behavior that led to the complaint was inappropriate.
2. Similar, future inappropriate behavior or retaliation will be addressed in a timely and serious manner.

Following Up

Follow up with both the victim and the perpetrator for several weeks to several months.

After you take final action, it is important to follow up with both the victim and the perpetrator for several weeks to several months. You must check with the victim to be sure that the inappropriate behavior has stopped. You must also check with the perpetrator to be sure that he or she is dealing with the situation in a mature and appropriate manner.

In some cases, you may also want to offer the individuals additional counseling through employee assistance programs or other professional services.

Chapter Summary

A sexual harassment investigation is a complex and delicate task that you should undertake only under the direction of a qualified labor attorney.

- ◆ Have trained, knowledgeable people conduct your investigation—preferably a team that includes a man and a woman.
- ◆ Strive at all times to make objective decisions based on facts, not opinions.
- ◆ Take appropriate and timely action to stop further inappropriate behavior and to underscore the seriousness of the company sexual harassment policy.

The most important conclusion you can draw from this chapter—and from this book—is the importance of preventing sexual harassment in the first place. The time, effort, and energy required by a sexual harassment investigation is costly in terms of productivity, morale, and money. It is a cost an organization should not have to incur. It is a cost that can be prevented by managing and interacting with people in a respectful, positive way. When the leaders of an organization set the right example and expect others to follow their example, sexual harassment is not a problem.

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Self-Check: Chapter Six Review

Now that you have read Chapter Six, use this space to review what you have learned. If you are unsure of an answer, just refer to the text. Suggested answers appear on page 112.

1. It is often difficult for an employee to come forward with a sexual harassment complaint because (pick one):
 - a. "It's embarrassing."
 - b. "He or she will retaliate against me."
 - c. "It's my word against his or her word."
 - d. "They won't do anything."
 - e. All of the above.

2. True or False?
Most sexual harassment complaints are filed so the alleged victim can get rich from a lawsuit.

3. Your organization should provide several places where employees can file their sexual harassment complaints because:

4. The first question you should ask when a person brings you a sexual harassment complaint is (pick one):
 - a. Why did you put up with it for so long?
 - b. Am I the right person for this individual to talk with about this problem?
 - c. Did you tell him or her to buzz off?
 - d. Are you sure you want to go through with this?

5. True or False?
When an employee explains a sexual harassment complaint to you for the first time, you should interrupt frequently to make sure you understand it.

6. “Need to know” confidentiality means:

7. When you take final action in a sexual harassment case, you need to follow up to make sure that the perpetrator and the victim (pick one):
- a. Are staying away from each other.
 - b. Have apologized and are working closely with each other again.
 - c. Are telling other people accurate and truthful stories about what happened.
 - d. Are not experiencing or perpetrating further sexual harassment and are following the instructions you gave them at the end of your investigation.

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Answers to Chapter Reviews

Chapter One (page 23)

1. True—The Civil Rights Act prohibits discrimination on the basis of sex. Sexual harassment is a form of sex discrimination.
2. False—The legal standard for sexual harassment is quite high. Although many sexual harassment-type behaviors may not be illegal, they still affect worker comfort and workplace productivity.
3.
 - a. A greater percentage of the workforce is female. With larger numbers of women in the workforce, it's now somewhat easier for women to speak out about the issue.
 - b. The *melting pot* theory has been replaced by a belief that people should be able to retain their gender and cultural identities while functioning in a diverse workplace.
4.
 - a. Getting together for a lunchtime or after-work drink.
 - b. Meeting in hotel rooms rather than meeting rooms.
5. Formal power can be used to create policies that set the parameters for accepted behavior.

Chapter Two (page 33)

1. False—Sexual harassment is prohibited by the Civil Rights Act of 1964. It's a form of sex discrimination.
2. Discrimination, harassment, and sexual harassment can be created by the actions of:
 - a. Managers
 - b. Supervisors
 - c. Coworkers
 - d. Vendors
 - e. Visitors
 - f. Customers
3. Intentional.
4. Unintentional.
5. No—Retaliation occurs when one person uses something against another person or gets back at them for filing a discrimination or harassment complaint.

Chapter Three (page 50)

1. *Quid pro quo sexual harassment* occurs when an economic or job benefit is made conditional upon the receipt of sexual favors from the employee or when the employee is punished for refusing to grant sexual favors.
2. False—*Quid pro quo* sexual harassment must be unwelcome.
3. No. The statement doesn't make keeping the job conditional upon the granting of sexual favors.
4. c. Keeping his or her personal and business lives separate.

Chapter Four (page 72)

1. Environmental sexual harassment includes behavior such as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, such as name-calling, suggestive comments, and lewd talk and jokes, if such conduct unreasonably interferes with the individual's work performance or has the purpose or effect of creating an intimidating, hostile, or offensive work environment.
2. Coworkers
Vendors
Suppliers
Customers
Managers
Repair people
3. False—Environmental sexual harassment is prohibited by the Civil Rights Act of 1964. It also reduces worker productivity and morale.
4. False—Workplace displays of advertising materials with a sexual connotation can contribute to a hostile work environment.)

Chapter Five (page 89)

1. c. It establishes an expectation that at this company, people will be treated with respect and courtesy.
2. False—A well-written policy will tell people that sexual harassment is prohibited, but the policy still must be enforced, training must be provided, and supervisors must set a positive example in order to prevent sexual harassment.
3. a. The actions of managers and supervisors support it.
4. False—Sexual harassment has been a workplace issue as long as men and women have worked together. Even though today most people know about it, it still occurs.

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● Answers to Chapter Reviews

5. “Mario, have you ever thought about what a person goes through to file a sexual harassment complaint? It can be very embarrassing and humiliating. In many ways, the victim must place her or his own job security and peace of mind on the line, and a lawsuit can take years to process and settle. I think most people would stand a better chance of getting rich by buying a lottery ticket.”

Chapter Six (page 108)

1. e. All of the above.
2. False
3. The circumstances of each case are different. An employee may not feel comfortable talking to their supervisor because of fear of retaliation. The employee should be able to choose whether to take his or her complaint to a man or a woman.
4. b. Am I the right person for this individual to talk with about this problem?
5. False—You should plan to listen to the employee’s story at least twice. The first time, let him or her tell it without interruption.
6. Only those people who have a business need to know the information will be told the information.
7. d. Are not experiencing or perpetrating further sexual harassment and are following the instructions you gave them at the end of your investigation.