

SEXUAL HARASSMENT QUESTIONS AND ANSWERS
AN EMPLOYEE'S GUIDE

Foreword: The following contains answers to employees' most frequently asked questions when they allege sexual harassment within the workplace.

Q. What is sexual harassment?

A. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

1. Submission is made either explicitly or implicitly a term or condition of an individual's employment; or

2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual; or

3. The conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Key points to note in this definition are that sexual harassment involves:

1. Any action of a sexual nature, whether physical, verbal, or even non-verbal, may constitute sexual harassment if it is unwelcome, and..

2. Either amounts to a term or condition of employment (i.e., must be tolerated in order to maintain employment), or..

3. Is considered in making employment decisions regarding that person (e.g., promotions, performance ratings, assignments), or..

4. It creates a working environment that is intimidating, hostile or offensive which has the purpose or effect of unreasonably interfering with an individual's work performance or ability to remain employed in that workplace.

Types of Sexual Harassment: Sexual harassment is a form of sex discrimination which is a violation of Title VII of the Civil Rights Act of 1964. The Equal Employment Opportunity Commission's (EEOC) guidelines define two types of sexual harassment: "Quid pro Quo" and "hostile environment."

Q. What is "Quid pro Quo" harassment?

A. "Quid pro Quo" simply means "this for that." Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute "Quid pro Quo" sexual harassment when: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.

Q. What is Tangible Employment Action Harassment?

A. A tangible employment action is a significant change in employment status. Some examples of Tangible Employment Action Harassment are:

1. When an employee tells her supervisor that some people really don't like to have their necks and shoulders rubbed, he responds by saying "Those who want to get ahead, do."

2. A manager pressures a subordinate employee to join her for dinner and dancing. When he declines, she tells him that he can't expect her to "mentor" him on the job if he's unwilling to spend time together after hours.

3. After an employee resists her team leader's repeated suggestion that she travel with him so they "can get to know each other better," he turns in a project evaluation rating her work "sub-standard."

Q: What is Hostile Environment Harassment?

A: Hostile environment harassment is often harder for employees and managers to recognize. Hostile environment harassment is usually found where a general pattern of workplace behavior exists that is sexually-oriented, severe and pervasive. Here's how those descriptive terms have been defined in actual workplace situations:

Sexually-oriented behavior has been found to include:

- letters, emails, telephone calls, magazines, pictures and objects of a sexual nature or content
- deliberately touching, brushing, cornering, pinching or leaning over a person
- suggestive looks, comments, gestures or whistles
- unwelcome pressure for dates or sexual favors

- sexual jokes, teasing, remarks, and questions

Pervasive behavior is that which is widespread, common, or repeated. And behavior of a sexual nature is considered **severe** when it would be objectionable to a "reasonable person" within the circumstances.

Putting it all together, an employee may be found to have been the victim of hostile environment sexual harassment if repeatedly subjected to sexually-oriented behavior that a reasonable person would likely find objectionable.

Examples of Hostile Environment Harassment

- When an employee complains about the vulgar language and jokes that routinely fill the break room, her supervisor tells her to "lighten up and get used to it, because that's how boys behave."
- After learning that an employee has separated from her husband and may be getting a divorce soon, a co-worker has begun asking her out. After being repeatedly turned down, he has begun calling her at home to ask if she'd like him to "come over and help cure her loneliness."
- A manager who has decorated her office with various signs and posters containing derogatory remarks about men, routinely opens staff meetings by requesting that the males try to "shift your thoughts above the belt buckle for the next few minutes."
- A supervisor returns from an overseas trip with a wooden carving of a man wearing a barrel. When the barrel is lifted, a disproportionately large phallus pops out. The supervisor routinely raises and lowers the barrel while meeting with subordinates, and has asked several female employees if they'd like to see "the real thing."

Q: Is same-sex harassment also prohibited under applicable laws and regulations affecting federal employees?

A: Yes. For several years various federal courts split on this issue, with some saying current laws prohibit sexual harassment of any type, while others have concluded that it only addresses opposite-sex harassment. But in 1998 the Supreme Court ruled that employees are protected by current laws against both same and opposite-sex harassment. In addition in the federal service most—if not all—agencies already have created internal regulations or policies prohibiting sexual harassment of any variety. *Oncale v. Sundowner Offshore Services, Inc.*, 118 S.Ct. 998 (1998), the Court

held that same-sex sexual harassment is also actionable under Title VII.

Q: What are the administrative processes under which an employee is entitled to raise allegations of sexual harassment?

A: There are two: Title 10 Section 1561 and 29 CFR 1614.

1. Title 10 Section 1561 requires a Commanding Officer (CO) or Officer in Charge (OIC) who receives a complaint alleging sexual harassment by a member of the armed forces or a civilian employee of the Department of Defense to carry out an investigation, commencing within 72 hours after receipt of the complaint, and completed not later than 14 days after the commencement of the investigation.

2. Under 29 CFR 1614, an employee may bring an allegation of sexual harassment to the EEO Office alleging discrimination on the basis of sex in violation of Title VII of the Civil Rights Act. Employees bringing allegations using this process must be advised of their right to also bring such allegations forward under Title 10 Section 1561.

Q. What should I do if I believe I have been subjected to sexual harassment?

A. Advise the manager of those who are engaging in the harassing behavior. Or, if you prefer, you may proceed directly with one or both of the two options above.

Q. Do I have a time limit when reporting allegations of sexual harassment?

A. Under Title 10 Section 1561, there is no statutory time limit concerning the reporting of alleged sexual harassment. Under 29 CFR 1614, employees, former employees, or applicants who perceive they have been discriminated against must seek counseling on alleged discriminatory matters within 45 calendar days of the incident or personnel action.

Q. What happens after I exercise one of the two options?

A. Under Title 10, the Secretary of the Navy requires that complaints of sexual harassment filed by civilian employees will be processed according to the following timelines and procedures:

1. Within **72 hours** of receipt of the complaint, activity heads will:

a. Forward a detailed description of the allegation(s) to the next superior officer in the chain of command who is authorized to convene a general court-martial. This can be accomplished face-to-face, via e-mail or telephone call. This is intended to be a "heads-up" contact to the next reporting senior.

b. Commence, or cause the commencement of, an investigation of the complaint.

c. Inform the complainant that the investigation has commenced.

2. Activity heads will make every reasonable effort to ensure investigations are completed within **14 days** of commencement.

3. Within **20 days** after the date that the investigation has commenced, activity heads will submit a final report on the results of the investigation to the next reporting senior, including any action taken as a result of the investigation.

4. If the investigation is not completed within 14 days of commencement, activity heads will submit an interim report to the next superior officer in the chain of command and will continue to submit a report every 14 days until the investigation is completed by whatever method is requested by the next reporting senior.

5. Upon completion of the investigation, activity heads will:

a. Within **three days** of receipt of the investigation report, determine if the allegations are substantiated.

b. Within **six days**, notify the aggrieved person in writing of receipt of the investigations findings to include: (1) the results of the investigation, (2) the decision made on substantiation of the allegation(s) and (3) to the extent practicable, the decision on corrective actions taken or proposed.

Under 29 CFR 1614, complaints brought forward to the EEO Office will be processed in accordance with 1614.

Q. Is there always an investigation conducted and, if so, who will conduct the investigation?

A. As soon as management learns about alleged harassment, it should determine whether a detailed fact-finding investigation is necessary. For example, if the alleged harasser does not deny the accusation, there would be no need to interview witnesses, and the

employer could immediately determine appropriate corrective action. If a fact-finding investigation is necessary, it should be launched immediately. The amount of time that it will take to complete the investigation will depend on the particular circumstances. If, for example, multiple individuals were allegedly harassed, then it will take longer to interview the parties and witnesses. The investigator should be well trained in the skills that are required for interviewing witnesses and assessing credibility. Such skills include neutrality, objectivity and empathy. The alleged harasser should not have any supervisory authority over the individual who conducts the investigation and should not have any direct or indirect control over the investigation.

Q. What resources are available to me for further guidance?

A. Title 10 Section 1561

29 CFR 1614

SECNAVINST 5300.26C

EEOC Enforcement Guidance www.eeoc.gov/docs/harassment

B. HRO Norfolk, Equal Employment Opportunity Programs Department, 445-1664, located in Building N-26, Gilbert Street, 2nd Floor, Suite 2307, Naval Station, Norfolk