What Is Sexual Harassment?

Sexual harassment is a form of sex discrimination. As a result, when it occurs on the job it violates the laws against sex discrimination in the workplace, including Title VII of the Civil Rights Act of 1964. Title VII applies to workplaces with 15 or more employees.

Sexual harassment is unwelcome behavior that happens to workers because of their sex. But for her or his sex, a worker would not have been targeted.

It includes:

- Unwelcome sexual advances
- Requests for sexual favors, or
- Hostile verbal or physical conduct that targets based on gender, whether or not sexual overtures are involved.

Sexual harassment occurs when:

- A person’s submission to or rejection of sexual advances is used as the basis for employment decisions about him or her, or submission to sexual advances is made a condition of his or her employment (quid pro quo harassment), or
- Sexual conduct or gender-based hostility is sufficiently severe or pervasive that it creates an intimidating, hostile, or offensive work environment (hostile work environment harassment).

Sexual harassment may or may not involve any physical contact, and words alone may be enough to constitute either type of harassment. Conduct that includes unwanted sexual touching, sexual assault, or rape is not only illegal sexual harassment, but is also a crime.

Sexual harassment need not be motivated by sexual desire. Non-sexual conduct directed at a worker because of his or her gender, such as offensive or derogatory comments about women in general, or hostile and derogatory remarks because a woman is not conforming to stereotypes about how women should behave, can constitute sexual harassment. The federal Equal Employment Opportunity Commission (EEOC) considers harassment and other discrimination based on gender identity and sexual orientation to be forms of gender-based harassment that violate Title VII. Some courts have held this as well; this is an evolving area of the law.

Incidence and Prevalence

- Sexual harassment remains a widespread problem, affecting women in every kind of workplace setting and at every level of employment. Surveys indicate that at least one quarter of all women have experienced workplace sexual harassment. In Federal Fiscal Year 2015, almost one-third of all charges filed with the EEOC involved harassment, and nearly a quarter of those harassment charges involved sexual harassment.
- No occupation is immune from sexual harassment, but the incidence of harassment is higher in workplaces that have traditionally excluded women, including both blue collar jobs like construction, and white collar ones like medicine and science. Women working in industries with a high proportion of low-wage jobs, such as food service and agriculture, also report high incidences of sexual harassment.
- Few victims of harassment formally make a complaint to their employers or file a charge with fair employment agencies. Indeed, according to surveys 70 percent to close to 90 percent do not. Women are reluctant to make allegations of sexual harassment for a number of reasons, including fear of losing their jobs or otherwise hurting their careers, fear of not being believed, the belief that nothing can or will be done about the harassment, and
embarrassment or shame at being harassed. 10

• Women experience harassment by supervisors, co-workers, and even customers and clients. 11 Men also experience sexual harassment, and the harasser can be the same sex as the victim. 12

Harms from Harassment

• Sexual harassment often has a serious and negative impact on victims’ physical and emotional health, and typically the more severe the harassment, the more severe the reaction. The reactions frequently reported include anxiety, depression, sleep disturbance, weight loss or gain, loss of appetite, and headaches. Researchers have also found that there is a link between sexual harassment and Post-Traumatic Stress Disorder. 13

• Harassment can also cause substantial financial harm for victims. Victims often try to avoid the harassing behavior by taking sick leave or leave without pay from work, or even quitting or transferring to new jobs. This results in a loss of wages. 14

• Employers also suffer significant financial losses from the job turnover, use of sick leave, and losses to individual and workgroup productivity that result from unchecked harassment. 15

• Harassment can poison the work atmosphere and negatively impact other workers who are not themselves harassed. 16

Employer Liability

Employers can be legally responsible for sexual harassment against their employees and liable to them for damages. When an employer is liable for harassment depends on the type of harassment, and who committed it.

Harassment by a high-level supervisor:

• If the harassment results in a tangible employment action against the victim of harassment (such as firing, demotion, or a pay cut), the employer is automatically responsible. 17

• If the harassment does not result in a tangible employment action, then the employer can also be automatically liable unless it can show that (1) the employer exercised reasonable care to prevent and promptly correct any harassment, and (2) the employee unreasonably failed to take advantage of the company’s preventive or corrective measures or to otherwise avoid harm. 18 The employer might make this showing if, for example, it had a system for reporting harassment that was communicated to the employee and the employee failed to make such a report.

Harassment by a low-level supervisor, co-worker or third party:

• The employer is liable if the employer was negligent in allowing the harassment to occur—meaning that the employer knew or should have known about the harassment and failed to take immediate and appropriate corrective action. 19 This standard also applies to harassment by lower-level supervisors who have the authority to direct daily work activities (like determining work schedules and day to day work assignments), but not the authority to hire, fire, set pay, make promotions or demotions, reassign to significantly different work responsibilities, or take other tangible employment actions. 20

When a plaintiff demonstrates the employer is liable for sexual harassment, she is entitled to be made whole through back pay (if she lost her job or had her pay cut as a result of the harassment) and monetary compensatory damages. In some cases, punitive damages are also available. Title VII caps total damages awards at $50,000 to $300,000, depending on the size of the employer, though uncapped damages are sometimes available under state law. Victims of harassment are also entitled to a trial by jury. 21

2 In Baldwin v. Dept of Transportation, EEOC Appeal No. 0120133080 (July 15, 2015), the EEOC held that a claim of discrimination on the basis of sexual orientation necessarily states a claim of discrimination on the basis of sex under Title VII. See also U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM’N (EEOC), WHAT YOU SHOULD KNOW ABOUT EEOC AND THE ENFORCEMENT PROTECTIONS FOR LGBT WORKERS, available at https://www.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm (last visited Nov. 11, 2016).
5 EEOC, SELECT TASK FORCE ON THE STUDY OF HARASSMENT IN THE WORKPLACE, REPORT OF CO-CHAIRS CHAI R. FELDBLUM & VICTORIA A. LIPNIC (June 2016), available at https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm [EEOC SELECT TASK FORCE REPORT]; EEOC CHARGES ALLEGING SEXUAL HARASSMENT FILED WITH THE
Although women make up only 2.6 percent of workers in construction and extraction occupations, a U.S. Department of Labor study found that 88 percent of women construction workers experience sexual harassment at work. Nat’l Women’s Law Ctr., Women in Construction: Still Breaking Ground 2, 8 (2014), available at https://www.nwlc.org/resources/women-construction-still-breaking-ground/.


abstract (eighty percent of female farmworkers in California’s Central Valley reported experiencing some form of sexual harassment).


11 See 29 C.F.R. §1604.11(e).


14 For example, one analysis found sexual harassment cost federal employees $4.4 million between 1992 and 1994. Sexual Harassment in the Federal Workplace, supra note 9, at 26.

15 For example, the federal government lost $327 million due to harassment from 1992 to 1994. Id.

16 Cortina & Berdahl, supra note 10, at 481 (“Job related-correlates include impaired team relationships, increased team conflicts, lowered team financial performance, lowered justice perceptions, cognitive difficulties (e.g., distraction), and over-performance demands”). Decreased work group productivity was the largest single cost to the federal government in its 1990s survey of sexual harassment. Sexual Harassment in the Federal Workplace, supra note 9, at 25-26.


18 Id.

19 See Ellerth, 524 U.S. at 759; Faragher, 524 U.S. at 799; 29 C.F.R. §1604.11(d).


21 42 U.S.C. §1981a(b), (c).