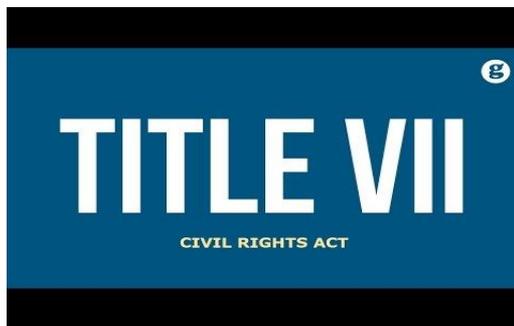


Sexual Harassment – Is It or Isn't It?

SUPERVISOR, MANAGER AND EMPLOYEE TRAINING

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Objectives

- Define Sexual Harassment and offensive behaviors that can be considered harassment.
- Recognize that sexual harassment of any type is a form of discrimination and will not be tolerated.
- Implement ways of handling claims of sexual harassment.



Legal Background

Title VII of the Civil Rights Act of 1964

Civil Rights Act of 1991

Title IX



Legal Background

The Civil Rights Act as passed in 1964 contained a carve-out for educational institutions; Congress eventually extended Title VII to educational institutions, local and state governments, and the federal government in the Equal Employment Act of 1972.

The Department of Justice takes the position that Title IX and Title VII are **separate enforcement mechanisms** that can both be used to attack the same violations.

There is a split in the courts, particularly with respect to Title IX claims made by employees

Both Laws Apply

Case Law:

The U.S. Supreme Court specifically held that “employment discrimination comes within the prohibition of Title IX.” (*N. Haven Bd. of Ed. v. Bell*, 456 U.S. 512, 530 (1982)).

US DOE Guidance:

In the last two decades, the Department of Education has engaged in robust definition and redefinition of its enforcement standard for sexual harassment on college campuses. Title IX’s protections clearly extend to students complaining about employee sexual misconduct, but it is not clear, whether and how Title IX’s provisions apply to employee-on-employee sexual misconduct.

What School MUST DO

1. The School must have a reporting requirement and must designate mandatory reporters.
2. The School must outline how those individuals are trained, and
3. The School must outline what a mandatory reporter's role is in the process

WHO is a Mandatory Reporter?

All employees are expected to report any incidents of sexual harassment, assault, domestic violence, dating violence, and stalking of which they may be aware.

Types of Sexual Harassment

Quid Pro Quo

Hostile Environment



DEFINITION-QUID PRO QUO

Quid Pro Quo sexual harassment occurs when:

Employment or evaluation decisions or expectations-hiring decisions, promotions, salary increases, assignments or performance evaluations are based on an employee's or student's willingness to grant or deny sexual favors.

Hostile Environment

Hostile Environment occurs when verbal or non-verbal behavior in the workplace or school environment:

Is unwanted or unwelcomed.

Is severe or pervasive enough to affect the person's work or school environment.



Four Groups of Sexual Harassment



Verbal



Visual



Written



Physical



Specifics:

Verbal/Written: Comments about clothing, personal behavior, or a person's body;
sexual or sex-based jokes;
requesting sexual favors or repeatedly asking a person out;
sexual innuendoes;
telling rumors about a person's personal or sexual life;
threatening a person, sending emails or text messages of a sexual nature.

Physical: Assault; impeding or blocking movement;
inappropriate touching of a person or a person's clothing;
kissing, hugging, patting, stroking .

Visual: Items in environment, photos, screen savers, calendars.

People harass others to:

Express dominance or power;

Organizationally or socially control someone;

Attempt to seek peer approval;

Use as a bullying tactic.



Who Can be Harassers?

Anyone can harass, just as anyone can be the target of harassment regardless of sex, sexual preference, age, or professional position.

Same sex harassment and Female to Male harassment are illegal.

Submission to sexual activity by the employee or student citing harassment is not a defense an employer can use to avoid liability in a sexual harassment suit.



Sexual Attraction v. Sexual Harassment

Sexual Harassment is a form of discrimination and has nothing to do with one person's physical attraction.

It is a misuse of POWER!!!





Cost to the Organization

Low Morale

Investigation of the sexual harassment complaint.

Depositions.

Trial.

Low productivity due to diversion of focus.

Negative impact on other managers, employees, and witnesses.

Adverse publicity about the organization.

Basic Steps for Handling Complaints

1. Take the complaint
2. Interview the alleged harasser
3. Initiate the investigation
4. Take the appropriate action, if necessary



What happens when both sexual misconduct and other workplace misconduct are at issue

Are there two investigations (Title IX office and a human resources office)?

- No. There should be one HR and one Title IX investigator.

How do investigations shared by two offices operate?

- Credibility determinations, analysis, and conclusions should be done together and considering BOTH policies.
- Discipline matters must be addressed through both policies.

Considerations

How, when, why, and to what extent will information be shared between offices (e.g., the Title IX office and human resources for purposes of employee files and discipline)?

Where allegations concern employees who work together, how will interim measures like no-contact orders be enforced?

Who is authorized to impose discipline and non-disciplinary measures?

Questions to ask:

Where did the behavior occur?

Who was involved?

Were there any witnesses?

Did you talk to anybody else about what happened?

Has this happened before?

How long has this been going on?

Was the person told that the behavior was unwelcome?



Questions NOT to ask

Avoid “why” questions such as, “Why didn’t you do something about this before?”

Don’t ask leading questions such as, “Would you want to continue working here if the behavior continues?”

Avoid asking multiple choice questions such as, “Did she touch you on your arm, the shoulder, or the face?” Instead ask, “Where did she touch you?”



Points to keep in mind when talking to the alleged harasser

- ▶ Describe the circumstances surrounding the complaint.
- ▶ Be serious and to the point.
- ▶ Be unbiased.
- ▶ Stay on the topic.
- ▶ Ask the person to respond to each allegation separately.
- ▶ Tell the alleged harasser that the behavior must stop.
- ▶ Document the meeting.
- ▶ Take appropriate action based on your findings.
- ▶ Follow up with the person who filed the complaint.

When talking to witnesses

Do not initially identify the alleged recipient or alleged harasser.

Describe the situation and circumstances of the alleged harassment.

What was the focus of the witnesses' observations.

Talk in private.



An Organization Plan for Eliminating Sexual Harassment

Review your behavior and that of others for evidence of illegal or impermissible conduct.

When such behavior is identified ask these questions:

1. Is the appropriate conduct or behavior in the workplace or in the classroom or school?
2. Is it legal (in accordance with the law)?
3. Is it permissible (in line with regulations)?
4. Is it proper (defensible by general standards)?
5. Could the behavior have a disruptive effect upon an employee or student?

What Can You do to Prevent Sexual Harassment?

If you become aware of the questionable behavior and even if there is no complaint you MUST:

- ▶ Take immediate and corrective action
- ▶ Inform higher level supervisor
- ▶ Communicate with Human Resources, EEO and/or top management.
- ▶ Document action taken.
- ▶ Communicate action taken to the affected employee, explain what he or she should do if the problem should occur.
- ▶ Advise employees of their rights to use the EEO complaint process.

SCENARIOS



From the Outside

An important vendor rep hangs around the front office and is increasingly flirty with a particular employee. Your employee is not interested and looks uncomfortable. You overhear her tell him to stop, but he does not. You suspect that the school is getting much better service and prices because the vendor is interested in dating the employee and the budget is really tight.

What do you do?

Mind Your Own Business!

Your teachers work really hard and sometimes they like to let loose and relax. Some of them are a rowdy bunch. When they go out as a group, especially around the holidays or after sporting events, they are loud. Crude, sexually-based jokes, insults and jibes abound. None of the staff which include male and female workers ever complain, but last time they were out some community members were in the bar and overheard. One parent heard about it, mentioned it to you and thought you needed to do something. Seriously??

But They Like it?

Your employees are almost all women. You recently hired a few men and they are getting quite a bit of attention! The women make comments about the guys' appearance and clothing and ask about their personal lives. As everyone gets to know each other better you are noticing more physical touching accompanying the comments about arms, strength, you know... You thought about saying something but guys don't feel harassed, they like it, right?

One Person's Joke...

An employee routinely checks their personal texts and emails at work. Some of the stuff she receives contains pornographic pictures and jokes that open on screen. She shuts them down quickly, but you are hearing other employees discussing this and one person has brought this specifically to your attention and told you they are offended.

Going Along

An employee and her direct supervisor go to an out of state conference. Somewhere during dinner the second evening he starts to express a lot of interest. He asks her to go for more drinks after dinner and she agrees, but later tells you she was very uncomfortable. She doesn't want you to do anything but just wants you to be aware.

Were you Listening?

When an institution receives notice of sexual harassment, the institution has an obligation to (check all that apply):

- End the harassment
- Abide absolutely by the complainant's wishes for confidentiality
- Remedy the effects of harassment
- Prevent the recurrence of harassment
- Notify victim of their right to report to law enforcement

Review

Under Title IX, who has the responsibility to report sexual harassment?

- Campus Security
- Everyone
- Responsible Employee

Extra Credit

_____ (True/False) – The institution only needs to investigate incidents of which it has actual notice.

Extra, Extra Credit

Which of the following external elements impact institutional Title IX policies and procedures (check all that apply):

- Title IX
- FERPA
- Caselaw (federal and state)
- Title VII
- Department of Justice Procedures
- Department of Education's Office for Civil Rights procedures
- Sexual Assault Victims Bill of Rights

????? QUESTIONS ??????

