

EDUCATIONAL INSTITUTIONS



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Sexual Harassment Prevention in the Workplace

Utica National Insurance Group



Laws Against Sexual Harassment

Title VII of the Civil Rights Act of 1964

- Prohibits discrimination on the basis of race, color, religion, national origin, or sex which includes sexual harassment.

Title IX of Educational Amendments of 1972

- Prohibits anyone because of sex be denied benefits of any educational program

Civil Rights Act of 1991 (Sections 102 and 103)

- An amendment to Title VII to provide jury trials on discrimination claims, and introduced the possibility of emotional distress damages.



New York Law Requirements

Effective October 9, 2018, new legislation requires all NY Employers to create and publish a Sexual Harassment Policy.

Employers also have a duty:

- to provide a workplace free of unlawful discrimination and harassment, including sexual harassment;
- to investigate all complaints of discrimination and harassment;
- to take remedial action immediately; and
- where appropriate, to take corrective action to improve such conduct following an investigation.



What is Sexual Harassment?

Sexual Harassment:

- Is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law.
- Includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender.
- The U.S. Equal Employment Opportunity Commission (EEOC) defines sexual harassment as “Unwanted or Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when this conduct explicitly or implicitly effects an individual’s employment, unreasonably interferes with an individual’s work performance, or creates an intimidating, hostile or offensive work environment.”



Types of Sexual Harassment

Quid Pro Quo

- Latin term that means “this for that” or “one thing for another.”

Hostile Work Environment

- Physical,
- Verbal,
- Non-verbal



Behaviors of Sexual Harassment

Examples of “Quid Pro Quo” sexual harassment:

- A supervisor using their position as leverage to promise an employee an opportunity for a pay raise or advancement in exchange for a date or sexual favors.
- A supervisor demoting an employee or forcing them to relocate because he or she refused to go on a date.
- A supervisor firing an employee because he or she ended a relationship with the supervisor.



Behaviors of Sexual Harassment

Examples of “Hostile Work Environment” sexual harassment:

– Physical:

- Touching, groping, patting, pinching, stroking, squeezing, fondling, tickling or brushing against someone.
- Snapping someone’s bra.
- Pulling down someone’s pants or shorts, or flipping up or reaching under a skirt.
- Attempting or committing a sexual assault (which is also a crime)



Behaviors of Sexual Harassment

Examples of “Hostile Work Environment” sexual harassment (continued):

- Verbal:
 - Threats or bribes for unwanted sexual activity.
 - Sexual or derogatory comments and innuendos.
 - Sexual jokes or rumors.
 - Sexually-suggestive sounds.
 - Gender-specific insults.
 - Unwanted sexual invitations or propositions.
 - Using the phone, text, email or social media to send sexist jokes.
 - Playing songs with inappropriate lyrics.



Behaviors of Sexual Harassment

Examples of “Hostile Work Environment” sexual harassment (continued):

- Non-Verbal:
 - Ogling or leering.
 - Pointing or winking.
 - Sexually suggestive gestures, facial expressions or bodily movement.
 - Taking, showing or distributing humiliating or degrading images of a sexual nature, including exploitative, suggestive or altered digital photos or video clips.
 - Intentionally blocking someone’s path.



Negative Effects of Sexual Harassment

- Declining physical & emotional health
- Loss of self-esteem
- Reprimands or terminations
- Severe stress
- Workplace violence
- Lawsuits
- Suicide ideation



Other facts on Sexual Harassment

- Incidents of quid pro quo and hostile environment are not limited to staff members and supervisors only.
- Gender of the victim and harasser can be different or the same.
- Harassment can be unintended.
- Conduct outside of Work.
- The New York Law expands its protection to non-employees.
- A single severe incident can by itself constitute sexual harassment.
- Annual anti-sexual harassment training is required for all employees.



The Supervisor's Responsibility

Supervisors and managers are held to a high standard of behavior. They:

- are expected to set a good example by demonstrating proper workplace behavior.
- foster a high-level of trust among their employees.
- are required to report any harassment reported to them or which they observe.
- are responsible for any harassment or discrimination they should have known about.
- must take prompt remedial measures if sexual harassment occurs.
- should consult with their HR department on all questionable sexual harassment matters.



Mandatory Reporting

All employees must report any harassment that they observe or know of, to Human Resources or designated individual:

- If you have been sexually harassed;
- If you know that another employee is being sexually harassed; or
- If you believe that another employee may have been sexually harassed.



What Should I do If I am Harassed?

Report the harassment

- You are encouraged to follow your employer procedures first including reporting harassment to a supervisor, manager or another person designated by your employer to receive complaints (as outlined in your sexual harassment prevention policy) so the company can take action;
- Submit a complaint form or report it verbally;
- Consult with an attorney; and/or
- File a complaint with any of the federal or state agencies including the EEOC; New York State Office of Attorney General (OAG) Civil Rights Bureau, New York State Division of Human Rights (SDHR) and/or New York City Commission on Human Rights.



What Should I do If I Witness Harassment?

Anyone who witnesses or becomes aware of potential instances of sexual harassment should report it to a supervisor, manager or designee.

It is unlawful for an employer to retaliate against you for reporting suspected sexual harassment or assisting in any investigation.



Investigation and Corrective Action

- Employers must take allegations seriously and investigate fairly.
- Required to conduct a prompt and unbiased investigation to ensure the rights of the accuser, the reporting party, and the responding party are respected.
- The investigation will be kept confidential to the extent possible.
- Any employee may be required to cooperate as needed in an investigation.



Retaliation

Any employee engaged in “protective activity” is protected by law from being retaliated against.

Protected Activities include:

- Making a complaint about harassment or suspected harassment
- Providing information during an investigation
- Testifying in connection with complaint



Retaliation

What is Retaliation?

Any action to alter an employee's terms and conditions of employment because that individual engaged in protected activities.

Examples:

- Sudden change in work schedule or work location
- Demotion/Termination
- Threats
- Continued or further harassment.
- Alienating the victim or witness from the team environment.



Top 5 Mistakes When Investigating Alleged Sexual Harassment

1. Failure to Investigate an “Informal” Complaint
2. Inadequately Trained Investigator
3. Electronic Evidence Mis-Steps
4. Lack of a Thorough and Complete Investigation Report
5. Failure to Notify Both Parties (Complainant and Respondent) of the Outcome



Best Practices

- Use common sense and have courtesy for others.
- Read “signs” and “clues” from people.
- Always think twice before hitting the “send” button on electronic communications.
- Remember personal emails, text messages, voicemails and social media posts are accessible forever.
- Be careful with your sense of humor and conversation.
- Be aware of personal remarks about yourself or others.
- Consider personal space and boundaries.
- SafeSchools Training – <https://uticanational.safeschools.com>



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Case Study Scenarios

Example # 1: Not Taking “No” for an Answer

Lillian's coworker Ralph has just been through a divorce. He drops comments on a few occasions that he is lonely and needs to find a new girlfriend. Lillian and Ralph have been friendly in the past and have had lunch together in local restaurants on many occasions. Ralph asks Lillian to go on a date with him—dinner and a movie. Lillian likes Ralph and agrees to go out with him. She enjoys her date with Ralph but decides that a relationship is not a good idea. She thanks Ralph for a nice time, but explains that she does not want to have a relationship with him. Ralph waits two weeks and then starts pressuring Lillian for more dates. She refuses, but Ralph does not stop. He keeps asking her to go out with him.



Case Study Scenarios

Example # 2: The Boss with a Bad Attitude

Sharon transfers to a new location with her employer. Her new supervisor, Paul, is friendly and helps her get familiar with her new job duties. After a few days, when no one else is around, Paul comes over to Sharon's work area to chat. Paul talks about what he did last night, which was to go to a strip club. Sharon is shocked that Paul would bring up such a topic in the workplace and says nothing in response. Paul continues talking and says that all the women in the office are so unattractive that he needs to get out and “see some hot chicks” once in a while. He tells Sharon he is glad she joined the staff because, unlike the others, she is “easy on the eyes.” Sharon feels very offended and demeaned that she and the other women in her workplace are being evaluated on their looks by their supervisor.



Questions?

