

Sexual Harassment - The Basics

Defining sexual harassment

- Quid Pro Quo: using the power of your position to obtain sex
- Hostile environment: making the workplace hostile to a protected class
- Third party: employee claims of harassment by inmates for which employer may also be liable

Sexual Harassment - The Basics

Examples of harassing behaviors:

Verbal

Unwelcome comments
Racial/sexual epithets
Offensive jokes/stories

Visual

Offensive pictures/photos/cartoons
Offensive posters/calendars/magazines/objects
Offensive screen savers/videos

Physical

Unwelcome touching/hugging/kissing/patting/stroking
Standing too close/ogling/suggestive gestures

Written

Unwelcome personal letters/e-mails



Hollis v. Town of Mount Vernon

A male police dispatcher would hang around the station after hours, looking in through the windows at the female dispatchers. He emailed one, an African-American, telling her that he "didn't know he could love chocolate so much." He would often show up to talk to another female dispatcher, Hollis, with short shorts and no underwear on, repeatedly texted her, recited love poems and even showed up uninvited to her chemotherapy treatments.

When the acting police chief failed to take any action, Hollis actually complained to the mayor about the harasser's conduct. The mayor replied:

"I don't blame him baby. I'd like to follow you around, too. Why wouldn't he want you?"

Hollis repeatedly asked the acting chief to take action, and when he wouldn't, she asked the police chief, who was on leave, to look into the matter. The acting chief became angry with her for going behind his back.

After several attempts to get action taken, including one more attempt to get the mayor involved, Hollis attended a town council meeting to discuss the situation, but the acting chief pulled her down and talked her out of bringing the matter up. The acting chief never took action and Hollis eventually quit her job.

Hollis sued and eventually settled with the town, regaining her job.

The New Sexual Harassment

Overt examples of classical sexual harassment and discrimination are not nearly as pervasive in the workplace as newer and more subtle forms of harassment and sexism.

Issues Raised by Technology

- Text messaging and email
 - Issues of context - emotional import or sarcasm is hard to convey without tone and body language cues
- Social media
 - Facebook
 - Example: Manager Bob sends a friend request to Employee Laura on Facebook. She works in close proximity with him and feels like she can't reject the request.
 - What if:
 - He immediately goes through her page and clicks "Like" on every picture of her in a bikini.
 - He tries to start conversations with her about various interests she has liked, which makes her uncomfortable.
 - He tells her that he noticed her relationship status has changed to single and wants to know if she wants to talk about it.
 - Twitter - Employee Laura follows Manager Bob on Twitter, and Bob tweets out scantily-clad pictures, saying, "I love tall redheads." Laura happens to be a tall redhead.

Subtle Sexism

- Descriptive bias
 - Code words for genders: Women are "warm," "emotional," "caring," but also "passive," "not competent"
 - A study found that male candidates for a math-related task were preferred to female candidates because of the perception that women are bad at math.

The flip side of this is called prescriptive bias:

When a woman acts in ways that violate gender biases, they are seen in negative light.

So, the woman who acts in a what would be considered "confident" or "assertive" in a man might be considered "abrasive" or "bossy." If a woman acts stoically, she may be considered rude or cold.

Studies have found:

- Women are 15% less likely than men to get promoted.
- Male executives who speak more often than their peers are deemed more competent (by 10%), while female executives who speak up are considered less (14% less)
- Women speak less and are interrupted more (maninterrupting)

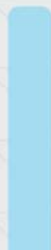
Romance to Sour Grapes

Sometimes reporting relationships can blossom into a consensual romantic relationship, but what happens when those relationships go sour?

Should these relationships be permitted in the workplace?

Or should you have a nonfraternization policy?

Sexual harassment is not limited to male on female harassment, either.



In Texas, a jury recently returned a verdict of \$567,000 in favor of a male Deputy Constable who was sexually harassed by the female Constable. Among the sexually harassing acts:

- She would perform lap dances in the Deputy Constable's lap, saying he should go with her to a strip club for "chunky chick night"
- She would put his hands on her breasts, saying, "Here, hold these."
- She would lift her shirt and place it over the Deputy's head, forcing him to "motorboat" her breasts
- She repeatedly offered him oral sex at work

Retaliation?

The chief of cardiology at Yale Medical School, Dr. Simons, made repeated advances and wrote a love letter in Italian to Dr. Di Lorenzo, a postdoctoral researcher, despite the former being married and the latter dating a member of the department.

Dr. Di Lorenzo rejected all Dr. Simons's advances. After she left for another job, Dr. Simons continued alleged retaliation against Dr. Di Lorenzo's now husband, denying him promotions and removing him from his own grants, freezing him out professionally.

Dr. Simons eventually resigned.

What's new in discrimination?

Pregnancy discrimination - *Young v. UPS*

Pregnancy Discrimination Act: "women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purpose."

The Supreme Court set out a new test for pregnancy discrimination, stating policies that produce a significant burden on pregnant women without a sufficiently strong justification are discriminatory.

NOTE: The Supreme Court deviated from EEOC guidelines on pregnancy discrimination.

The EEOC guidance from 2014 specified that policies that restricted light duty to only employees with on-the-job injuries were facially discriminatory, since they excluded pregnancy.

The court held that that an employer must accommodate a pregnant woman if it accommodates others similar in their ability or inability to work, but there must be a significant burden on pregnant women to prove discrimination.

The EEOC has since revised its guidance to reflect the outcome in *Young*.

Any questions?



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