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Contact Hours: **1**

## Sexual Harassment Training

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**LEARNING OUTCOME AND OBJECTIVES:** Upon completion of this continuing education course, you will demonstrate an understanding of sexual harassment and appropriate responses in the workplace. Specific learning objectives to address potential knowledge gaps include:

- Define sexual harassment according to federal law.
- Distinguish between the types and forms of sexual harassment that may occur in the workplace.
- Describe appropriate actions that a victim or witness to sexual harassment in the workplace may take.
- Summarize how to report sexual harassment within one's place of employment and to the EEOC (Equal Employment Opportunity Commission).
- Explain the whistleblower protection law.

### INTRODUCTION

Sexual harassment of employees is a form of sexual discrimination that may occur in the workplace or with work-related individuals outside of the work environment. Sexual harassment is linked to power structures and positions the victim to either submit to the exploitation or to endure adverse consequences (Hendrickson, 2017). Although the majority of cases of sexual harassment are reported by female victims, harassment in the workplace can affect any gender.

Examples of sexual harassment include:

- Sexual coercion, such as promising a reward in return for sexual favors or making threats if the demands are not met

- Unwanted sexual attention, such as pressure for sex, physical touch, sexual assault, or even rape
- Being subjected to sexual discussion, nude or sexually suggestive artwork or images, and sexual insults
- Gender slurs, name-calling, or gender-related insults

Primary victims are direct recipients of the unwanted behavior, and secondary victims are observers who may experience indirect effects such as greater bystander stress, lower job satisfaction, lower health satisfaction, lower productivity, and higher psychological distress (Miner-Rubino & Cortina, 2007).

Sexual harassment in the healthcare workplace is harmful at many levels and should be addressed as a risk factor in terms of disease prevention and health promotion (O’Neil et al., 2018). A victim of sexual harassment may not necessarily experience economic injury or termination of employment but may be adversely affected in other ways, such as stress or difficulty concentrating at work. Patients who are being cared for by a victimized clinician may suffer from the health professional’s distraction or inattentiveness. Coworkers who observe the harassment may also be adversely affected (RAINN, 2019).

In a 2018 national survey on sexual harassment and assault, 38% of women and 13% of men reported having experienced employment-related sexual harassment (Stop Street Harassment, 2018). Sexual harassment is thought to be under-reported among clinicians, with multiple factors contributing to the reluctance to report. Some of the identified factors include:

- The existence of a hierarchal system in hospitals and healthcare
- Concern for the clinician’s reputation
- Clinicians who work in isolation  
(Kabat-Farr & Crumley, 2019)

IMPACTS OF SEXUAL HARASSMENT		
Emotional	Mental Health	Physical Health
<ul style="list-style-type: none"> <li>• Anger</li> <li>• Fear</li> <li>• Humiliation</li> <li>• Shame</li> <li>• Guilt</li> <li>• Powerlessness</li> </ul>	<ul style="list-style-type: none"> <li>• Anxiety</li> <li>• Depression</li> <li>• Panic Attacks</li> <li>• PTSD</li> <li>• Difficulty concentrating</li> <li>• Substance abuse</li> <li>• Suicidal ideation</li> </ul>	<ul style="list-style-type: none"> <li>• Headache</li> <li>• Fatigue</li> <li>• Eating disturbance</li> <li>• Sleeping disturbance</li> </ul>
(RAINN, 2019)		



## WHAT IS SEXUAL HARASSMENT OF EMPLOYEES?

### Legal Definitions

Sexual harassment is considered a form of employment discrimination under Title VII of the Civil Rights Act of 1964, which states that it is unlawful to discriminate against a person because of that person's sex (including sexual orientation, gender identity, and pregnancy). Title VII applies to employers of 15 or more workers; labor unions and organizations; employment agencies; and state, federal, and local government agencies. Sexual harassment is conduct that is so frequent or severe that it creates a hostile or offensive work environment, interferes with performance at work, or results in an adverse employment decision (EEOC, 2019a; EEOC, n.d.-b).

Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. Such harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general.

Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex. The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

The law also protects job applicants, employees, and former employees from discrimination and from retaliation if they file a complaint about discrimination (EEOC, 2019b).

(Individual states may also provide definitions of sexual harassment; all healthcare professionals should familiarize themselves with such laws in their own states.)

#### CHANGING RULES AND LAWS

Some current interpretations of laws and rules related to sex discrimination are being challenged in the courts. For instance, the Supreme Court is expected to rule in 2020 on a case involving the EEOC (Equal Employment Opportunity Commission) and whether sex discrimination includes discrimination based on gender identity (Supreme Court, 2020).

### Types of Sexual Harassment

The two primary types of sexual harassment are 1) quid pro quo and 2) hostile work environment.

#### QUID PRO QUO

The Latin phrase *quid pro quo* literally means "this for that." In a quid pro quo situation, a perpetrator requires sexual favors in exchange for conditions of employment. This generally



involves an abuse of power and is the most commonly recognized form of sexual harassment (AHR, 2019).

### CASE

The CEO of a hospital asks a nursing manager out for dinner to discuss work. At the restaurant, the CEO describes being in an unhappy marriage and suggests that the nurse might be interested in spending more time together outside work. The nurse responds, “No, I am not interested in that sort of relationship.” The CEO then suggests that the nurse might like to reconsider the offer and that it could even involve a job promotion. While speaking, the CEO touches the nurse’s thigh under the table. The nurse immediately gets up and leaves the restaurant.

At work the following week, the nurse is called into the CEO’s office for a “meeting,” but the CEO does not discuss work business and instead tries to kiss the nurse. The nurse rebuffs the CEO and quickly leaves the office. The following day the director of nursing calls the nurse into their office and states, “I have to inform you that you’re being reassigned to a position as a floor nurse. Your management role is being phased out.”

### Discussion

This type of sexual harassment meets the definition of quid pro quo. The CEO implied that the nurse’s positive response to unwanted sexual advances was a condition for a promotion. The nurse’s continued refusal can also be reasonably tied to the nurse’s subsequent demotion.

## HOSTILE WORK ENVIRONMENT

A hostile work environment is created by unwelcome sexual conversation, requests for sexual favors, unwanted touch, or offensive remarks that would be perceived as offensive by a reasonable person. A hostile work environment can affect the health and well-being of the healthcare professional and can also impact patient care indirectly.

A hostile work environment exists in cases of:

- Unwelcome sexual advances
- Requests for sexual favors
- Verbal or physical harassment of a sexual nature
- Offensive general remarks about a gender
- Other direct or indirect conduct toward the victim that is perceived as offensive (Broderick & Saleen, 2019)



**CASE**

A physical therapist who works in a rehabilitation facility tells a coworker that she is unable to concentrate on her patients because one of the facility’s maintenance men is giving her unwanted personal attention. She adds that she is not sleeping well and having headaches and that she is anxious about coming in to work out of fear of this other employee. She describes his behavior as including comments on “how fine” she is looking and standing too close for comfort. He has also told her that she looks like she needs a massage and begun to rub her neck even after she has said that she feels “fine” and told him she doesn’t want a massage.

**Discussion**

This maintenance employee’s behavior constitutes sexual harassment because it is creating a hostile work environment for the physical therapist. He is making unwelcome sexual advances and verbally and physically harassing the physical therapist through his unwanted comments about her looks and by touching her without her permission. These actions are substantially interfering with the physical therapist’s work performance as well as affecting her physical and mental health.

While the public is aware of some forms of sexual harassment, many other forms of sexual harassment are generally below the surface of public consciousness. This has been compared to an iceberg, in which only a small percentage can be seen above the water’s surface (see table below and “Resources” at the end of this course).

<b>“ICEBERG” OF SEXUAL HARASSMENT</b>	
<b>Level of Public Consciousness</b>	<b>Forms of Harassment</b>
Above the surface	<ul style="list-style-type: none"> <li>• Promising professional rewards in return for sexual favors</li> <li>• Threatening professional consequences unless sexual demands are met</li> <li>• Rape</li> <li>• Sexual assault</li> <li>• Unwanted groping or stroking</li> </ul>
Beneath the surface	<ul style="list-style-type: none"> <li>• Relentless pressure for sex</li> <li>• Unwanted sexual discussions</li> <li>• Relentless pressure for dates</li> <li>• Nude images posted at work</li> <li>• Sexually humiliating acts</li> <li>• Sexual insults (e.g., “for a good time call...”, calling someone a whore)</li> <li>• Offensive sexual teasing</li> <li>• Sexist insults (e.g., “women don’t belong in science”)</li> <li>• Offensive remarks about bodies</li> </ul>



- |  |  |
|--|--|
|  | <ul style="list-style-type: none"><li>• Obscene gestures</li><li>• Sabotage of women's equipment</li><li>• Vulgar name calling (e.g., "slut," "bitch," "c**t")</li><li>• Gender slurs (e.g., "pu**y")</li><li>• Insults to working mothers (e.g., "you can't do this job with small kids at home")</li></ul> |
|--|--|

(Adapted with permission from NASEM, 2018)

## RESPONDING TO SEXUAL HARASSMENT

It is important for employees to know their rights and how to respond to harassment in the workplace so that they can protect themselves as well as become change agents to address this systemic problem. Employees have a legal right to report harassment, participate in a harassment investigation or lawsuit, or oppose harassment without being retaliated against for doing so.

Responses to harassment include direct confrontation of the harasser, bystander/witness interventions, following employer grievance mechanisms, and reporting the harassment to an outside entity. The EEOC (n.d.-a) recommends the following steps to employees who are being harassed:

1. If you feel comfortable doing so, tell the person who is harassing you to stop.
2. If you do not feel comfortable confronting the harasser directly, or if the behavior does not stop:
  - a. Check to see if your employer has an antiharassment policy by looking on the employer's website or in an employee handbook or by asking any supervisor or someone in the human resources department whether there is an antiharassment policy and if so, to give you a copy.
  - b. If there is a policy, follow the steps in the policy. The policy should give you various options for reporting the harassment, including the option of filing a complaint.
  - c. If there is no policy, talk with a supervisor, either your own supervisor, the supervisor of the person who is harassing you, or any supervisor in the organization. Explain what has happened and ask for that person's help in getting the behavior to stop.
  - d. File a charge of sex discrimination with the EEOC (or the appropriate state agency) to complain about the harassment. There are specific time limits for filing a charge with the EEOC (180 or 300 days, depending on where you work), so act promptly. (See also "Reporting Employee Sexual Harassment" later in this course.)



## Confronting the Harasser Directly

It is helpful for the victim to let the harasser know directly that the conduct is unwelcome and must stop (EEOC, n.d.-a). However, not all victims feel that they can do this, and it may be difficult if there is a perceived or actual imbalance of power.

Leland (2017) suggests six responses that individuals can state directly or in a modified form to attempt to stop the harassment, if appropriate to the situation. These responses are:

- “Do not do (the behavior). It is harassment.”
- “You may have intended for that joke/comment to be funny, but it was insulting.”
- “Thank you for (the intended compliment), but let’s get back to what we were working on.”
- “In the future, please ask my permission to touch/hug/etc. me.”
- “I am not interested in/I do not want (the behavior).”
- “I am uncomfortable with what you are saying/doing/the conversation.”

After the victim lets the harasser know that the behavior is unacceptable, they should make an internal report as soon as possible to a manager, supervisor, or the human resources department, or an external report to the appropriate agency (such as the U.S. EEOC). (See also “Reporting Employee Sexual Harassment” below.)

## Bystander/Witness Intervention

It is sometimes helpful for coworkers, witnesses, or other bystanders to intervene when they observe harassment taking place, using a variety of strategies. For example, a witness to sexual harassment may assist the victim to leave the situation or get to safety by implementing the **CARE strategy**.

- **Create** a distraction: A bystander can create a distraction in order to interrupt the harassment. However, if the situation is becoming violent, this is not a good intervention.
- **Ask** directly: A bystander can speak directly to the victim and ask whether they would like to be accompanied away from the situation.
- **Refer** to an authority: A bystander can speak to a manager or security officer. This is the safest way to intervene.
- **Enlist** others: A bystander may ask other bystanders or coworkers to help. (RAINN, 2019)



## Employer Grievance Mechanisms

Whether or not an employee has confronted the harasser directly, it is important that they follow the grievance mechanism that has been established by their employer in order to protect their rights. All employees should become aware of their employer's grievance mechanism, and employers should explain the process during regular employment-based sexual harassment trainings.

Employers are liable for harassment by a supervisor that results in a negative employment action such as termination, failure to promote or hire, and loss of wages. If the supervisor's harassment results in a hostile work environment, the employer can be held liable if they **do not** reasonably try to prevent and promptly correct the harassing behavior and the employee unreasonably fails to take advantage of any preventive or corrective opportunities provided by the employer.

Employers can also be held liable for harassment by nonsupervisory employees or nonemployees over whom they have control (such as independent contractors or customers) if they knew or should have known about the harassment and failed to take prompt and appropriate corrective action (EEOC, n.d.-c).

## REPORTING EMPLOYEE SEXUAL HARASSMENT TO THE EEOC

While it is recommended that all employers have in place policies and a mechanism for reporting sexual harassment to outside entities, it is not always the case that they do. Employees who believe they have been the victim of sexual harassment at the workplace have the right to file a charge of sex discrimination directly with the EEOC or the appropriate state agency to complain about the harassment.

The EEOC (Equal Employment Opportunity Commission) receives charges of discrimination against employers of 15 or more workers; labor unions and organizations; employment agencies; and state, federal, and local government agencies, as described in Title VII of the Civil Rights Act of 1964. A charge of discrimination is a signed statement asserting that an organization engaged in employment discrimination. In general, a charge must be filed within 180 calendar days from the day the discrimination took place (or 300 calendar days if a state or local agency enforces a law that prohibits employment discrimination on the same basis). It is best to file as soon as possible.

A charge of discrimination can be completed online, in person, or by mail:

- **Online.** The EEOC's Public Portal asks a few questions to help determine whether the EEOC is the right federal agency to handle a complaint and to begin the filing process.
- **In person** at an EEOC Office. Appointments can be scheduled online or by walk-in. An in-person interview with an EEOC staff member is recommended as the best way to assess any sex discrimination and determine whether filing a charge of discrimination is the appropriate path. It is helpful to bring any information that will help EEOC staff



understand the case as well as names and contact information for other people who know about what happened.

- **By mail.** A charge can be filed by sending a letter that includes information on the person filing, their contact information, a description of the harassment, when it took place, and other details. The EEOC will review the letter and respond as needed for more information.

EEOC does not take charges over the phone, but an individual can call 800-669-4000 to discuss their situation and for an explanation on how to file a charge.

Federal employees and applicants for federal jobs have a different complaint process and generally must contact an agency EEOC Counselor within 45 days (EEOC, 2019c).

(For more details on reporting sexual harassment to the EEOC, see also “Resources” at the end of this course.)

#### LITIGATION

The Civil Rights Act of 1964 allows victims and witnesses of sexual harassment in the workplace to file a lawsuit against the employer and/or harasser. The victims can request a *right to sue* letter from the EEOC and then file a lawsuit in the state and federal courts with this letter (U.S. EEOC, 2019d).

## WHISTLEBLOWER PROTECTIONS

Under Title VII of the Civil Rights Act of 1964, anyone who reports sexual harassment or opposes practices by their employer that are discriminatory on the basis of sex, files a discrimination charge, or testifies or participates in an investigation or litigatory process is protected from retaliation (EEOC, 2019a).

Illegal retaliation by employers includes:

- Discrimination against the claiming individual
- Firing the claiming individual
- Demotion or stripping title, duties, or responsibilities
- Threats against the claiming individual
- Harassment



## VICTIM RELUCTANCE TO REPORTING

Many victims of sexual harassment delay reporting or choose not to report at all, including 83% of female victims nationally. Some reasons for this include:

- Low self-esteem
- Feeling helpless
- Believing that reporting the harassment will not make a difference to their situation
- A sense of shame and/or blaming oneself about what occurred
- Minimizing the seriousness of harassment
- Denial that the harassment occurred
- Fear of the consequences of making a report
- Fear of confronting the harasser directly
- Concerns about how they will be perceived
- Concerns about whether they will be believed
- Concerns about their physical safety
- Fear of retaliation

Victims who have a history of abuse are likely to respond differently to harassment than those who do not have that background. They are more likely to have greater difficulty taking action because they may have already experienced not being believed or injustice in other circumstances.

Similarly, those who lack information concerning their rights or how to make a report are unlikely to come forward in a timely fashion (Engel, 2017).

(See also “Resources” at the end of this course.)

## CONCLUSION

Sexual harassment is prevalent in employment settings but often goes unreported. Effective prevention requires comprehensive policies and practices. Freedom from sexual harassment on the job is a human right, and employers have an ethical as well as a legal obligation to protect their employees from this form of abuse (Ross et al., 2019).



## RESOURCES

Bystander intervention (Caltech)

<http://givingvoice.caltech.edu/raise-awareness/bystander-intervention>

Facts about sexual harassment (EEOC)

<https://www.eeoc.gov/eeoc/publications/fs-sex.cfm>

How to file a charge of employment discrimination (EEOC)

<https://www.eeoc.gov/employees/howtofile.cfm>

800-669-4000

Iceberg of sexual assault (National Academies of Science)

<https://www.nap.edu/visualizations/sexual-harassment-iceberg/>

Sexual harassment practical strategies (Workplace Fairness)

<https://www.workplacefairness.org/sexual-harassment-practical-strategies>

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## TEST

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1. Which scenario does **not** fit the definition of sexual harassment in the workplace?
  - a. A manager jokes about sexual favors from an employee and hints about a job promotion.
  - b. Two coworkers end a sexual relationship, and one of them feels awkward and begins looking for another job.
  - c. An employee is afraid to go to work due to sexually suggestive remarks made by a supervisor.
  - d. A coworker regularly makes offensive comments about women in general.
  
2. The two primary types of sexual harassment are quid pro quo and:
  - a. Primary victimization.
  - b. Abuse of power.
  - c. Sexual favors.
  - d. Hostile work environment.
  
3. According to the “Iceberg of Sexual Harassment,” which is a form of harassment that is generally “above the surface” of public consciousness?
  - a. Insults to working mothers
  - b. Relentless pressure for dates
  - c. Sexist insults
  - d. Unwanted groping
  
4. An employee has experienced sexual harassment by a coworker and has confronted the harasser directly. When the harassing behavior continues, which is the **next** appropriate action for the harassed employee to take?
  - a. After a few minutes, ask the harasser if their working relationship has been damaged
  - b. Make either an internal or external report as soon as possible
  - c. File a lawsuit in the appropriate jurisdiction
  - d. Immediately begin looking for another position



5. Which is an element of the “CARE” strategy used by witnesses to intervene in sexual harassment incidents?
- Call 9-1-1 immediately to report the incident to the police.
  - Ask the victim directly whether they would like assistance.
  - Reprimand the harasser in order to publicly embarrass them.
  - Engage the harasser in small talk so the victim can escape.
6. An individual who is the victim of sexual harassment on the job can file a claim with which U.S. agency?
- Equal Employment Opportunity Commission (EEOC)
  - Occupational Safety and Health Administration (OSHA)
  - Department of Justice (DOJ)
  - Rape, Abuse, and Incest National Network (RAINN)
7. Which is **not** an example of illegal retaliation against a whistleblower who files a claim of sexual harassment?
- Disputing the truthfulness of the claiming individual.
  - Discrimination against the claiming individual.
  - Threats against the claiming individual.
  - Firing the claiming individual.