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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.
- Identify examples of the types and forms of unlawful sexual harassment.
- Describe appropriate actions that a victim or witness to sexual harassment in the workplace may take.
- Explain how to report sexual harassment within one's place of employment and to outside entities.
- Discuss whistleblower protection laws for employees who report sexual harassment.
- Summarize the responsibilities of employers to prevent, investigate, and correct sexual harassment.

### WHAT IS SEXUAL HARASSMENT?

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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 conditions (Legal Voice, 2022).

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 (EEOC, n.d.-e).

Both victim and harasser can be any gender. Although the majority of cases of sexual harassment are reported by female victims, in fiscal year 2021, the Equal Employment Opportunity Commission (EEOC, 2022) reported that 16.3% of sexual harassment charges were filed by males. The harasser can be the victim's supervisor, a supervisor in another area, a coworker, or someone who is not an employee of the employer, such as a client or customer.

Under federal law, 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. The law also protects job applicants, employees, and former employees from discrimination and from retaliation if they file a complaint about discrimination (Civil Rights Act, 1964).

#### SEX DISCRIMINATION

The Supreme Court ruled on June 15, 2020, on a case involving the EEOC that sex discrimination includes discrimination based on sexual orientation or gender identity. The court's ruling addresses Title VII, which states that an employer may not discriminate against an employee on the basis of sex, and interprets this law to include people who identify as homosexual or transgender (*Bostock V. Clayton County, Georgia*, 2020).

## FORMS OF SEXUAL HARASSMENT IN THE WORKPLACE

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It is important to be able to identify the different types and forms of sexual harassment.

### Primary 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. This type of sexual harassment frequently occurs between a



supervisor/boss and subordinate and is the most commonly recognized form of sexual harassment (Lonsway & Patrick, 2020).

## CASE

### Quid Pro Quo

The CEO of a hospital asks a nursing manager to go 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 (RAINN, 2023)



**CASE****Hostile Work Environment**

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 workers is giving her unwanted personal attention. She adds that she is not sleeping well and having headaches and that she is anxious about coming to work out of fear of this other employee. She describes this worker's behavior as including comments on "how good" she is looking and standing too close for comfort. The coworker 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 said directly that 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. The harassment includes making unwelcome sexual advances and verbally and physically harassing the physical therapist by making 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.

**Forms of Sexual Harassment**

Sexual harassment of either type (quid pro quo or hostile work environment) may appear in various forms, such as sexual coercion; unwanted sexual attention; being subjected to sexual conversation or images; or being subjected to sexual or gender-related insults.

Examples of sexual harassment in the workplace include:

- Implicit or explicit conditions of employment linked to sexual favors (e.g., offering rewards for sexual favors or threatening adverse consequences if they are not received)
- Physical acts of sexual assault or battery
- Verbal or nonverbal requests for sexual favors
- Verbal harassment, including conversation that refers to sexual acts or sexual orientation
- Unwanted touch or physical contact
- Undesired and unwelcome sexual advances
- Discussion of sexual situations or stories in the workplace or with coworkers
- Sexual coercion or pressure for sexual interaction
- Exposure of genitals or touching the genitals
- Displaying or sending unwanted photos, emails, or text messages that are sexual in nature (RAINN, 2023)



## Adverse Effects of Sexual Harassment

Sexual harassment in the workplace can lead to a variety of adverse consequences. Sexual harassment is harmful to employees at many levels, including psychological trauma, negative impact on family life, and detrimental effects to the employee’s health and well-being.

It is not only the primary victims who are affected by this form of abuse. Coworkers who observe harassment (bystanders) may also be adversely affected and experience more emotional and psychological consequences than coworkers who do not observe harassment (Acquadro Maran et al., 2022).

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, 2023)		

## RESPONDING TO SEXUAL HARASSMENT IN THE WORKPLACE

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 (EEOC, n.d.-b).

### Steps to Address Sexual Harassment

First, the harasser should be directly informed that their conduct is unwelcome. This may include:

- Telling the person that their actions are offensive
- Refusing all invitations for personal interactions outside of work
- Not engaging in any sexual banter or flirting in response



Next, an employer also must know or have reason to know about the harassment in order to be held legally responsible. It is best to submit a written description to the employer, including what response is being sought from the employer and harasser. This creates a written record of the complaint (Workplace Fairness, 2023).

The EEOC (n.d.-f) recommends that employees who are being harassed take these actions:

1. Let the harasser know directly that their conduct is unwelcome and must stop. However, not all victims feel that they can do this, and it may be difficult for them if there is a perceived or actual imbalance of power.
2. If the employee does not feel comfortable confronting the harasser directly, or if the behavior does not stop, they may:
  - a. Check to see if the 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 provide a copy.
  - b. If there is a policy, follow the steps in the policy. The policy should offer various options for reporting the harassment, including the option of filing a complaint.
  - c. If there is no policy, talk with a supervisor, either their own supervisor, the supervisor of the person who is the harasser, 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 to complain about the harassment. There are specific time limits for filing a charge with the EEOC (180 or 300 days, depending on the work), so the employee must act promptly.

## Reporting to the Employer

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.

An employer must know or have reason to know about the harassment in order to be held legally responsible. It is best to submit a written description, including what response is being sought from the employer and harasser. This creates a written record of the complaint (Workplace Fairness, 2023).

Following are examples of the questions that an employee may be asked when reporting sexual harassment to their employer:



- Who, what, when, where, and how: *Who* committed the alleged harassment? *What* exactly occurred or was said? *When* did it occur and is it still ongoing? *Where* did it occur? *How often* did it occur? *How* did it affect you?
- How did you react? What response did you make when the incident(s) occurred or afterwards?
- How did the harassment affect you? Has your job been affected in any way?
- Are there any persons who have relevant information? Was anyone present when the alleged harassment occurred? Did you tell anyone about it? Did anyone see you immediately after episodes of alleged harassment?
- Did the person who harassed you harass anyone else? Do you know whether anyone complained about harassment by that person?
- Are there any notes, physical evidence, or other documentation regarding the incident(s)?
- How would you like to see the situation resolved?
- Do you know of any other relevant information?  
(EEOC, 1999)

## 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, 2023)

## 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.



## REPORTING EMPLOYEE SEXUAL HARASSMENT TO THE EEOC

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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 with the Equal Employment Opportunity Commission (EEOC) and/or the appropriate state agency to complain about the harassment.

The EEOC receives charges of discrimination (sexual harassment) from employees whose workplace consists 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, n.d.-d).

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





## SUING AN EMPLOYER OR HARASSER

The Civil Rights Act of 1964 also 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, n.d.-a).

## VICTIM RELUCTANCE TO REPORTING

Many victims of sexual harassment delay reporting or choose not to report at all, and sexual harassment is thought to be underreported among clinicians, with multiple factors contributing to the reluctance to report. These include:

- Lack of knowledge of how to report and what situations may be reported
- Lack of trust in the authorities
- Lack of proof of the incident
- Minimization of the incident by the employee
- Fear of negative repercussions, including damage to one's reputation

In addition, human response to trauma includes fight, flight, freeze, and fawn. When this response is applied to sexual harassment in the workplace, an employee who “fights” is the employee who shares the situation and files a complaint. The employee whose response is “flight” may change jobs, transfer, or resign. The “freeze” response includes someone who does nothing and suffers in silence. Appeasement of the perpetrator, assuming the role of a silent bystander, or maintaining a relationship with the harasser are examples of “fawning.”

(Women in Global Health, 2022)

## “WHISTLEBLOWER” PROTECTIONS

### Federal Laws Protecting Reporters

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, who files a discrimination charge, or who testifies or participates in an investigation or litigatory process is protected from retaliation (EEOC, n.d.-f).

**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

## EMPLOYER CONSIDERATIONS REGARDING SEXUAL HARASSMENT

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Employers may be held liable in cases of employment-related sexual harassment. As such, employers are recommended to undertake reasonable care to prevent and promptly correct such harassment. For instance, this generally requires an employer to establish, disseminate, and enforce an anti-harassment policy and complaint procedure (EEOC, 1999).

### **Liability for Harassment by a Supervisor**

According to federal law, an employer is always responsible for sexual harassment by a supervisor that culminates in a “tangible employment action” (a significant change in employment status). If the harassment did not lead to a tangible employment action, the employer is still liable unless it proves that: 1) it exercised reasonable care to prevent and promptly correct any harassment, **and** 2) the employee unreasonably failed to complain to management or to avoid harm otherwise.

Examples of tangible actions include hiring, firing, promotion, demotion, undesirable reassignment, or a decision causing a significant change in benefits, compensation decisions, and work assignment. For instance, a supervisor engages in sexual harassment by firing or demoting a subordinate because they reject the supervisor’s sexual demands or by promoting a subordinate because they submit to the supervisor’s sexual demands (EEOC, n.d.-g).

### **Preventing and Correcting Harassment**

Employers should establish, distribute to all employees, and enforce a policy prohibiting harassment and setting out a procedure for making complaints. In most cases, the policy and procedure should be in writing.

Small businesses may be able to discharge their responsibility to prevent and correct harassment through less formal means. For example, if a business is sufficiently small that the owner maintains regular contact with all employees, the owner can tell the employees at staff meetings that harassment is prohibited, that employees should report such conduct promptly, and that a complaint can be brought “straight to the top.”

If the business conducts a prompt, thorough, and impartial investigation of any complaint that arises and undertakes swift and appropriate corrective action, it will have fulfilled its responsibility to “effectively prevent and correct harassment” (EEOC, n.d.-g).



## **Establishing an Anti-Harassment Policy**

An employer's anti-harassment policy should make clear that the employer will not tolerate all types of harassment, including those based on race, sex, religion, national origin, age, disability, or genetic information, or harassment based on opposition to discrimination or participation in complaint proceedings. The policy should also state that the employer will not tolerate retaliation against anyone who complains of harassment or who participates in an investigation (EEOC, n.d.-g).

## **Sexual Harassment Complaint Procedure**

The employer should encourage employees to report sexual harassment to management before it becomes severe or pervasive. The employer should assure employees that it will protect the confidentiality of harassment complaints to the extent possible.

### **TAKING COMPLAINTS**

The employer should designate more than one individual to take complaints and should ensure that these individuals are in accessible locations. The employer also should instruct all of its supervisors to report complaints of harassment to appropriate officials. Because a supervisor may be the one committing harassment or may not be impartial, it is advisable for an employer to designate at least one official outside an employee's chain of command to take complaints in order to assure that the complaint will be handled impartially.

### **INVESTIGATING COMPLAINTS**

An employer should conduct a prompt, thorough, and impartial investigation. The alleged harasser should not have any direct or indirect control over the investigation. The investigator should interview the employee who complained of harassment, the alleged harasser, and others who could reasonably be expected to have relevant information (EEOC, n.d.-g).

### **PROTECTING THE COMPLAINANT**

Before completing the investigation, the employer should also take steps to make sure that harassment does not continue. If the parties have to be separated, then the separation should not burden the employee who has complained of harassment. An involuntary transfer of the complainant could constitute unlawful retaliation. Other examples of interim measures are making scheduling changes to avoid contact between the parties or placing the alleged harasser on nondisciplinary leave with pay pending the conclusion of the investigation.

An employer should also make clear that it will not tolerate adverse treatment of employees because they report harassment or provide information related to such complaints. For example, when management investigates a complaint of harassment, the official who interviews the parties



and witnesses should remind these individuals about the prohibition against retaliation. Management also should scrutinize employment decisions affecting the complainant and witnesses during and after the investigation to ensure that such decisions are not based on retaliatory motives (EEOC, 1999).

## CONCLUSION

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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)

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

Fact sheet: sexual harassment discrimination (EEOC)

<https://www.eeoc.gov/laws/guidance/fact-sheet-sexual-harassment-discrimination>

How to file a charge of employment discrimination (EEOC)

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

800-669-4000

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## TEST

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[ [Take the test online at wildirismedicaleducation.com](https://www.wildirismedicaleducation.com) ]

1. Which scenario is **not** an example of 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. Which form of sexual harassment is the second primary type after “quid pro quo”?
  - a. Primary victimization
  - b. Abuse of power
  - c. Gender-related insults
  - d. Hostile work environment
  
3. Which action does the EEOC recommend an employee take if sexual harassment continues after the employee directly confronts the harasser?
  - a. After a few minutes, ask the harasser if their working relationship has been damaged
  - b. Follow the steps in the employer’s antiharassment policy
  - c. Contact local law enforcement to report a case of workplace violence
  - d. Begin looking for a job with another employer
  
4. According to the Civil Rights Act, which U.S. agency is designated to receive charges of discrimination from an individual who is the victim of sexual harassment on the job?
  - a. Equal Employment Opportunity Commission (EEOC)
  - b. Occupational Safety and Health Administration (OSHA)
  - c. Department of Justice (DOJ)
  - d. Rape, Abuse, and Incest National Network (RAINN)
  
5. Which phrase does **not** describe an example of illegal retaliation against a whistleblower who files a claim of sexual harassment?
  - a. Investigating the truthfulness of the claiming individual
  - b. Discrimination against the claiming individual
  - c. Threats against the claiming individual
  - d. Firing the claiming individual



6. Which statement is **correct** about employer considerations in regard to sexual harassment?
- a. Employers cannot be held liable for a supervisor's sexual harassment conduct against an employee.
  - b. Employers are recommended to establish, disseminate, and enforce an anti-harassment policy.
  - c. Employers are encouraged to publicize the names of alleged harassers in order to protect other employees.
  - d. Employers should avoid placing alleged harassers on leave with pay while an investigation is ongoing.

