



Unit 5

An Introduction to Workplace Harassment

Learning Outcomes

By the end of this unit the learner will be able to:

- ✓ Explain what is acceptable behavior in the workplace and what is not, and why
- ✓ Apply the benefits of harassment training
- ✓ Define the various types of harassment, including sexual harassment
- ✓ Assist in creating a harassment policy
- ✓ State some ways to prevent harassment and understand what role you can play

Unit 5

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Defining Harassment

What is Harassment?

Defining Harassment

Often harassment is based on an individual's view of what is acceptable and what is not. The Oxford Dictionary defines harassment as:

- To torment (someone) by subjecting them to constant interference or intimidation.
- To make repeated small-scale attacks on (an enemy) in order to wear down resistance.

Types of Harassment

There are many types of harassment, including:

- Verbal: Where threatening words or phrases are spoken
- Physical: Where someone is treated in a physically intimidating manner
- Sexual: Where inappropriate sexual advances are made
- Visual: Where inappropriate material is visible (such as centerfolds on an office wall)
- Gender: Demeaning behavior to another person based on that person's gender
- Cyber: Where harassment takes place via computer

Throughout this course, we will typically discuss sexual harassment. However, the strategies covered will, in general, work for all types of harassment.

Legal Definitions

Let's look at some legal definitions of sexual harassment.

Eleanor Holmes Norton, commissioner of the U.S. Equal Opportunity Commission, 1980

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such

conduct by an individual is used as the basis for employment decisions affecting such [an] individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(Source: <http://www.eeoc.gov/eeoc/publications/fs-sex.cfm>)

Supreme Court of Canada (Janzen and Govereau v. Platy Enterprises, 1989)

Unwelcome conduct of a sexual nature, which detrimentally affects the work environment, or leads to adverse job-related consequences for victims of harassment.

(Source: <http://www.harassment.uottawa.ca/prevention/en/pages/understanding/index.htm>)

European Community Code of Practice

Unwanted conduct of a sexual nature, or other conduct based on sex, affecting the dignity of women and men at work. This can include unwelcome physical, verbal, or non-verbal conduct.

(Source: http://www.stopvaw.org/eu_commission_code_of_practice_on_measures_to_combat_sexual_harassment)

Summary

The difficulty with sexual harassment is that whether the behavior is welcome, is determined by the recipient, as long as s/he is not acting unreasonably. We will discuss how to overcome this difficulty later on in the course.

Reasonable Man/Reasonable Woman

One of the basic questions of harassment is: what is reasonable or unreasonable? What would the average person find welcome or unwelcome in the workplace?

Write your group's guidelines for reasonable behavior below.

This type of harassment is much more difficult to pin down. It occurs when the harassing behavior creates a hostile, negative work environment for the employee.

Behavior Categories

The U.S. Merit Systems Protection Board states that unwelcome behavior can fall into seven categories.

- Sexual teasing, remarks, jokes, or questions
- Pressure for dates
- Letters, e-mail, telephone calls, or materials of a sexual nature
- Sexual looks or gestures
- Deliberate touching, leaning over, cornering, or pinching
- Pressure for sexual favors
- Actual/attempted sexual assault or rape

Questionable Scenarios

Let's look at some common scenarios that raise questions about harassment.

S/he laughed at my joke. Doesn't that mean that it was welcome?

This often comes up in cases of sexual harassment. This is where communication is key. If a person tells an offensive joke, don't laugh or respond with a joke of your own. It's your responsibility to let people know where your line is. It's their responsibility to respect that line.

Remember, too, that often people feel uncomfortable setting boundaries. In this example, an employee may laugh at the joke because it was told by their supervisor and they feel that they're obligated to participate. The employee may also worry about being judged negatively if they object. The truth is, if you're uncomfortable, someone else probably is too.

It happened on a business trip, so it doesn't count.

The key word here is "business." If employees are on a business trip together, the same rules that apply in the office apply to the trip.

It was just a compliment.

It can still be harassment.

It only happened once.

That’s like saying, “He only broke into my house once, so it’s not a crime.” If it’s unwelcome, of a sexual nature, and causes detrimental effects, then it’s still harassment, whether it happened once or 20 times.

The comments were directed at someone else.

If you witness inappropriate comments (such as your colleague commenting on how someone else might be in bed, without that person present) you can still file a sexual harassment complaint.

Sexual harassment is all about sex, and sex didn’t happen.

All forms of harassment are about coercion and power. What differentiates various types of harassment is how the harasser attempts to exert his/her power: obscene images, inappropriate touching, physical threats, or verbal abuse.

This is the way I’ve grown up; you can’t expect me to change.

If you grew up in a family where nudity was the norm, would you expect your workplace to accommodate that as well? We’ve all learned some behaviors that aren’t appropriate in the workplace.

Is This Harassment?

Scenario One

Ruth, Charles, and Sharon all work in the same office. Recently, Sharon heard Charles call Ruth “sweetheart.” She asked Ruth about it and Ruth said that Charles does it all the time, but it doesn’t bother her.

Is this situation harassment?

Scenario Two

The Acme Pro office includes a sauna and gym. Bob has started going to the gym regularly with two other members of his team. In the locker room, his two friends have been sharing sexual stories and details about particular parts of their anatomy. This makes Bob very uncomfortable.

Is this situation harassment?

Scenario Three

You work on a small advertising team. Your newest member, Jason, has recently switched careers; he used to be a masseuse. He is always telling you that you look tense and rubbing your shoulders.

Is this situation harassment?

Scenario Four

Sam has noticed that one of his co-workers is obviously interested in him. He has told her, “no,” several times when she has asked him for a date. Recently she has been sending him letters at home, and it is causing stress in his marriage.

Is this situation harassment?

Scenario Five

Lisa and Bill were on a business trip last weekend. They had dinner together at the hotel, during which Lisa talked openly about her private life and repeatedly touched Bill’s hand. He feels very awkward now that they are back in the office.

Is this situation harassment?

The Purpose of Training

Why is Training Important?

Many people feel that since sexual harassment has been around for so long, they don't need training. Others feel that they don't need to be told how to behave. The truth is, we all need some help with basic skills, especially since the legal aspect of harassment is changing constantly.

Training can help prevent sexual harassment.

Harassers may think twice about their behavior, victims will know how to prevent and confront harassers, and managers will be prepared to prevent and deal with harassing situations. Training is also an excellent opportunity to review your sexual harassment policy, if you have one. Most good training programs also help people identify ways to reduce their risk of harassment and educate victims on what to do if they are harassed.

Training increases morale.

It tells employees that you care about them and their well-being. It also sends the message that you're willing to listen and confront this type of behavior.

Training can reduce your liability if a complaint is filed.

A large part of sexual harassment complaints center around the notion of a hostile environment, an environment that is poisoned against a particular group. If an environment is found to be hostile, the employer will likely be liable for any harassment complaints.

Employees, managers, and those involved in the complaint resolution process should all receive different types of training geared towards the role that they will play. Everyone should know how to protect themselves and others from a harassment complaint, and what to do in the event that a complaint is filed.

Creating a Harassment Policy

Key Policy Points

The best way to prevent harassment from occurring is by setting a clear policy, educating employees about it, and enforcing it. The policy needs to be written by a team of people (typically the Human Resources department), preferably with the input of staff at all levels and some legal advice. This group

should also lay out education, follow-up, and monitoring guidelines to ensure that the policy is effective. Writing a policy will take time, resources, and effort, but the end result will be a document that outlines your company's stance on harassment.

Writing the Policy

Your policy needs to have five essential elements. Above all, ensure the policy is clear, up to date, and updated periodically.

The rules.

State clearly that harassment is not acceptable in the workplace and will be dealt with. Then, state what the rules are in the company. Make sure that these rules are in line with the laws in your area.

Specific behaviors, examples, and circumstances.

The document should spell out what behaviors are and are not acceptable. If the company has special circumstances (such as a gym, or if business travel is required) rules for those situations should be spelled out as well.

Safe from reprisal clause.

Make sure the policy clearly states no one will be acted against for bringing a claim to the employer's attention or attesting to details within that claim.

The consequences.

Make sure you include the possible solutions and consequences for a harassment violation, including what disciplinary action may be taken. Also include consequences for false claims.

A complainant's rights.

Make sure victims know what will happen if they file a complaint and what rights they have, including confidentiality, privacy, and the right to a fair hearing. They should also know their avenues of complaint: to the internal Human Resources department, to the appropriate government department, to police, or to the legal system.

The Complaint Procedure

If an employee decides to file an internal complaint, they need to know what the process is. This part of the policy should also be included in operations manuals and employee handbooks. It should cover the following points.

Who is responsible for each stage of the complaint process?

Let employees know what their options are and what will happen at each stage. For example, you may want to suggest that employees start by consulting with their immediate supervisor.

Who are the sexual harassment advisors in the company?

A sexual harassment advisor is an impartial person who can be consulted by someone who thinks they are being harassed or who has been accused of harassment. (There can and should be more than one advisor in a company.) The advisor must be able to give impartial advice, be familiar with the organization's sexual harassment policy, and have knowledge of sexual harassment issues in general. Their role is to provide information, explain choices, and help an employee with the process. They should not have a role in the investigation or resolution of the complaint. Advisor-employee conversations are confidential and cannot be included in the complaint investigation.

What information needs to be included in the complaint?

It is essential that the complaint is put in writing. The formal complaint should include:

- Name of person accused of harassing
- Details of harassment and incident(s)
- Descriptions of any acts or statements
- Dates, times, locations of incident(s)
- Witnesses to the incident(s)
- Other possible victims
- Date and signature of complainant

Educating Staff

After the policy has been written, Human Resources (or the immediate supervisor) must go over it with all staff. You need to go beyond stuffing a copy of the policy in the employee mailboxes and hope they read it; have an HR member sit down with a small group and go over every word in the policy. When new employees are hired, make sure they receive the same education. All employees should receive this education over again when changes are made to the policy.

about it. And keep an ear to the ground; rumors of harassment can be exaggerated or even completely false, but they may direct you to keep a closer eye on a particular situation.

As a manager, it's perfectly within your right to address situations that could develop into harassment. If you observe behavior that could be inappropriate, take the person aside, note what you observed, and explain how it could be interpreted or how it could cause problems. Then, suggest an action plan for change. Even a simple action like saying, "That's not really appropriate for work," when someone tells a sexually charged joke, can go a long way towards setting a good example and preventing harassment.

There are some other situations you should keep your eye on and deal with promptly to help prevent situations from escalating into harassment complaints.

Role Play

Role Plays for Pairs

- A team member has a habit of yelling at their co-workers.
- A team member often touches their co-workers when speaking.
- The manager is interested in a team member.
- A team member is interested in their manager.
- A team member often wears provocative clothing.
- A team member has a sexually explicit calendar in their cubicle.
- You think a team member has made a decision based on gender.

Role Plays for Trios

- Two people are becoming interested in each other. The manager needs to address the issue.
- Two team members have broken up but still have to work together. The manager needs to develop a plan to address the issue.
- Person A is interested in Person B, but Person B isn't interested and has asked their manager to relay the message.
- Person A is interested in Person B, but Person B isn't interested. Person A won't leave Person B alone, so Person B has asked their manager to intervene.

Notes

Protecting Yourself

Minimizing Your Risks

There are many things that you can do to minimize your risk of being harassed. This is not to say that harassment victims invite or deserve the behavior. Often, harassment is the result of unclear boundaries, mixed signals, and a lack of communication. As Dr. Peter Rutter says, “You cannot judge unwelcome sexual behavior, the prime ingredient of all sexual harassment, without recognizing how you yourself as well as the people around you perceive and manage their sexual boundaries.”

For example, let’s say that Susan has recently gained weight but has not shopped for a new wardrobe. As a result, her clothing is a bit too tight and revealing. Men often take this as a sexual invitation, which it is not. If she is harassed, it is not her fault, but the chances of that behavior occurring could have been reduced if she were aware of the signals that she was unintentionally giving off.

Key Strategies

Let’s go over some ways that you can reduce your risk of being harassed and of becoming a harasser.

Stay professional in the office.

Wear appropriate clothing, don’t touch your co-workers, and don’t tell sexual stories or jokes. Set a boundary around yourself that you and others will respect.

Identify your fantasies.

Let’s say you’re attracted to your administrative assistant. As long as you’re aware of that fantasy and the potential problems it could cause, you can make an extra effort to be professional and not send off mixed signals. Above all, don’t share your fantasies in the workplace.

Take care of yourself.

Make sure you’re healthy mentally and physically. Often, people who lack social support systems turn to work colleagues as a source of emotional support and sometimes sexual interaction. This is a plan for disaster.

Learn to recognize what is unwelcome and inappropriate.

Pay attention to people's verbal and non-verbal cues. Know when to back off. Know the rules within your organization.

Have common sense.

Before you speak, think, "Is this really appropriate for the workplace?" We're not saying that you censor yourself to the point that you become mute, but make that extra effort to think before you speak.

Apologize.

If you speak or behave in a way that is inappropriate, apologize and make an effort to ensure it doesn't happen again.

What If It Happens to Me?

What Works and What Doesn't?**Strategies That Don't Work**

If someone is harassing you, here are some things not to do.

Ignore or avoid the harasser.

This is an approach many people take because they think it's the least harmful. It's actually more harmful: the victim suffers in silence and the problem doesn't get resolved.

Try to appease the harasser.

Some people will change their appearance or dress in an attempt to deflect attention from themselves, or they may joke about the harassment. Neither approach works.

Comply with the aggressor.

For most harassers, harassing is a power struggle. Once you give into one demand, they will push for more.

Aggression.

Cursing, yelling, or otherwise abusing your harasser doesn't resolve anything. It makes you look out of control and shows the harasser that they do have power over you. It can also put you at risk for violence.

Strategies That Do Work

Verbal confrontation is one of the strategies that has been proven to work. In life-threatening situations, physical confrontation (such as martial arts or self-defense tactics) is acceptable. For most situations, try this seven-part plan. *(Adapted from Dr. Peter Rutter)*

Give verbal notice.

Tell the harasser what they are doing is not acceptable immediately in a calm, unemotional tone of voice. A statement like, "Get your hands off my butt," is firm, assertive rather than aggressive, and non-negotiable. You should also start keeping a written record of events, times, dates, and people that witnessed the events. Even if the issue is resolved at this first step, you need to document what happened.

Give stronger warnings and notice that you will report the harasser.

If the harasser continues his/her behavior, repeat the first step but make it stronger. Something like, "I have already told you to stop touching me. If you don't stop, I will report you for harassment," repeats the original message, and is still assertive and non-negotiable. Make sure you keep your tone of voice calm and unemotional.

Issue written warnings. Keep a record.

Write the person an e-mail or letter and send it to them. This letter should be done the same way the other warnings were: firm, assertive, and non-negotiable. It should restate the points you made in your verbal warnings. Make sure you do not threaten the harasser; stay as unemotional as possible. Also make sure you keep a copy of these letters for your records.

Make an informal harassment inquiry.

If you have been unable to deter your harasser, or if you feel that there is serious risk in confronting your harasser (such as being physically harmed or losing your job), go to your manager, your company's Human Resources department, or the company's harassment officer. They will typically give you their opinion about the claim: whether it is more or less serious than the complainant perceives and what options s/he has next.

Be aware that this step may place your complaint on record. And, no matter what the outcome of this meeting, be sure to record its details and add it to your log of events.

Make a formal complaint in the organization.

This step turns the complaint into a formal process. Both parties (the complainant and the alleged harasser) have a lot at stake here: their reputation, their job, and possibly their career. If you have events documented and recorded, you will feel a lot more secure in raising a formal complaint.

However, be aware that this step will probably bring the issue to the attention of your co-workers. Investigators usually try to maintain your privacy as much as possible, but they will likely need to talk to your co-workers to confirm events.

The process of raising a complaint is not always a bitter and prolonged one. Sometimes the harasser and the complainant can meet to discuss the incident(s) and come out with a better understanding of each other and what happened. If your harassment issue has not been resolved by the first four steps, this will be the last opportunity to resolve it in-house.

Make a formal complaint with the government.

In most countries, there is an agency that governs against harassment and discrimination. You should consult with an attorney before filing a complaint with this organization or agency. Some areas have time limits; the EEOC in the United States, for example, requires filing no later than 180 to 300 days after the alleged incident, depending on the state where you live.

Go to court.

If your workplace and the governing agency have both been unable to resolve the issue to your satisfaction, the last recourse is a harassment lawsuit. These are expensive, time-consuming, and emotionally painful. Make sure you have exhausted all options before you take this step.

Saying No

We all have a tough time saying no occasionally. Sometimes, we're not sure how to say no even when we're being harassed or threatened.

There are three steps to a good NO

.

- Stay calm. Keep your hands at your sides.
- Speak firmly but at a normal volume.
- Say No. If possible, add the behavior you want them to stop, but do not add feelings, justification, or padding.

What If It's Happening to Someone Else?

There will often be situations where a manager thinks or knows that harassment is occurring, but a complaint has not been filed. Or, an employee may come to the manager, and they may determine together that harassment is occurring, but the employee may choose not to file a complaint. The manager may even be hearing repeated gossip about harassment.

There are many reasons why a harassment victim may choose not to file a complaint. They may be afraid of their harasser, they may be worried about career implications, or they may worry about what their co-workers will think. Perhaps they can't face the stress, or are embarrassed or ashamed.

If a manager knows or thinks that harassment is occurring, they are obligated to face it. Even if the only proof they have is rumors, they must still investigate it.

If the harassment has become known to the manager through gossip or some second-hand means, the manager should speak to the alleged victim. This should not be an interrogation or a meeting specifically about the harassment; it can be a general catch-up, "How are you?" sort of meeting.

If the manager has some sort of evidence that harassment may be taking place, then s/he should initiate a formal complaint. The incident can then be investigated and dealt with under normal procedures. The investigator should send a letter to the victim detailing the complaint and the process that will be followed.

Remember, it is always best to err on the side of caution. Turning a blind eye to a potential harassment problem can open your company up to lawsuits.

Someone Has Filed a Complaint Against Me!

If you are in the situation where someone has filed a complaint against you, do not panic. There are several steps that you can take to deal with the situation appropriately.

Get a lawyer.

You need professional advice to help you determine what your workplace rights are and your legal rights. Seek out a lawyer who specializes in employment law or harassment law. (Your union may be able

to assist you with this.) Although this may require an initial investment of time and money, it will likely save you much stress and heartache.

True or false?

Take some time and think about the accusation against you. Most accusations have some grain of truth in them; the conflict lies in the interpretation of behavior. Try to write down the events that may affect this case. Include the date, time, witnesses, and your description of the event.

Do not contact your accuser.

Never, ever attempt to speak to your accuser directly. This can make things much worse; you may be perceived as trying to intimidate or silence him/her.

Use the opportunities given to you.

Do your best to be professional, unemotional, non-defensive, cooperative, and rational during the process. If mediation is offered, accept it (as long as your attorney thinks it is a good idea). Being angry and vindictive will not accomplish anything, and it may sway the outcome against you.

Get psychological support.

Being accused of harassment isn't fun for anyone. Make sure you have a system of friends and family that knows what you are going through and who support you. You may also want to consider professional therapy to help you address this situation and the influences that led to it. For some people, a crisis like this forces them to address long-standing issues and in the end, helps them improve their lives and themselves.

Addressing a Complaint

No matter how proactive you are, most employers receive a harassment complaint at some point in time. Most harassment lawsuits result from complainants feeling that their complaint was addressed improperly or unfairly, so it is important that the complaint be dealt with appropriately from the very beginning. There are four key components to this.

Act quickly.

It is very, very important that a complaint be dealt with as soon as it is filed. As time goes on, details and evidence may be lost. Worse, the harassment may continue, and the employer may be seen as creating a hostile environment where harassment is acceptable, thereby increasing the employer's liability.

Acting quickly also sets the right tone for the entire process. It shows everyone that the employer takes harassment seriously and that harassment will not be tolerated.

Act fairly.

You must resist jumping to conclusions or making a decision. It is very easy to be influenced by past events, personalities, rumors, and personal perceptions. Anyone who is involved in the complaint process must be completely unbiased and fair to both parties.

Set the wheels in motion.

Once a complaint is filed, start the process. Make sure that someone is assigned to keep everyone involved informed about what is going on. This is particularly important for the investigation stage. This stage can take days or weeks or even months, and it is important that someone touches base with both the complainant and the respondent to let them know the complaint is still proceeding.

Thank the complainant.

Taking the time to say, "Thank you for bringing this issue to my attention," shows that you want to address issues that arise.

Handling False Complaints

We have discussed false accusations a bit throughout this workshop. However, it is worthy of its own small session.

First, let's define a false complaint. We are not referring to an accusation that turns out not to be a harassment issue. We are referring to a complaint that is made specifically to harm the respondent: to embarrass them, to damage their career or reputation, to get them fired, or to get revenge for something the respondent did.

If someone comes to you to discuss a harassment complaint or files a formal complaint, it is crucial that you be open-minded and not judge whether the complaint is true or false. It is essential that the process proceed as normal: through filing a formal complaint to the investigation stage.

At the investigation stage, the investigator should be made aware that this is potentially a false claim. Then, they can perform a preliminary inquiry and present evidence to the decision maker, so that a decision can be made whether the complaint appears legitimate or not. It is also recommended that the decision maker and/or investigator consult a lawyer.

You must be very, very careful and very, very sure when determining that a complaint is false. If the complaint is indeed false, roles are reversed. The complainant will have the same action against them as if they were the harasser. The respondent may be entitled to some of the same compensation as a harassment victim would be: an apology or even damages.

Further Reading:

- ✓ *Ackroyd, Linda. Human Resources Guide to Managing Sexual Harassment. Canada Law Book, 1999.*
- ✓ *Benjamin, Susan F. Perfect Phrases for Dealing with Difficult Situations at Work. McGraw-Hill, 2008.*
- ✓ *Crichton, Michael. Disclosure. Arrow Books Ltd, 2006.*