Sexual Harassment: Defining Sexual Harassment in the Workplace



Safety Talk

What's at Stake?

Sexual harassment is defined as any conduct, comment, gesture, or contact of a sexual nature that is likely to cause offence or humiliation to any employee; or that might, on reasonable grounds, be perceived by that employee as placing a condition of a sexual nature on employment or on any opportunity for training or promotion.

In its subtler forms, sexual harassment may include sexual jokes and innuendo, or unwanted and repetitive gestures of affection. In its more extreme forms, sexual harassment can invade a person's life and escalate to stalking, physical assault, including attempted and actual rape, and murder.

What You Should Know

Two Types of Sexual Harassment

Quid Pro Quo

The Latin term quid pro quo translates to "something for something." Quid pro quo harassment occurs in the workplace when a manager or other authority figure offers or merely hints that he or she will give the employee something (a raise or a promotion) in return for that employee's satisfaction of a sexual demand. Examples include:

1. Sexual coercion which include: threats of demotion; or job loss; and offering job benefits in exchange for sexual favors.
2. Agreeing to go on a date with a supervisor, sexual relations with the supervisor or making any sort of professional decision based on being silent about submission of another employee.
3. Hiring, promotions, salary increases, shift or work assignments, and performance expectations are some of the working benefits that can be made conditional on sexual favors.

Example 1: A professor or teacher makes an unwelcome sexual advance to a student and implies or explicitly makes it known that if she or he does not accept, she or he will likely not pass the course.

Example 2: In a rental housing situation, a building superintendent asks for sexual favors in return for granting a tenant's request to transfer to a larger unit.

Example 3: One worker demands sexual favors before sharing important job-related information with a colleague.

https://www.ohrc.on.ca/en/policy-preventing-sexual-and-gender-based-harassment/2-identifying-sexual-harassment#_ftn9

Hostile Work Environment

A hostile or poisoned work environment is one in which unwelcome conduct of a sexual nature creates an uncomfortable work environment for some employees. Examples include:

- Verbal or nonverbal behavior in the workplace that is unwanted, unwelcomed and severe and pervasive enough to affect the person's work environment.
- It focuses on the sexuality of another person or occurs because of a person's gender or other protected characteristic. This can include:
    - Electronic communications.
    - Displaying sexualized objects or images.
    - Gender harassment, with behaviors such as: negative remarks, jokes about the opposite sex or about a co-worker's sexual orientation.
    - Unwelcomed non-verbal sexual advancements such as touching, intentionally getting too close, leering, making sexual gestures, and sexual assault.
    - Verbal sexual attention such as: making sexually derogatory statements, sharing insulting jokes or remarks about a co-worker or group of individuals; asking unwanted questions about a colleague's sex life; and pestering an employee for sexual favors.

Example 1: An employer's repetitive use of terms such as "sweetheart," "little lady," "hun," "sweetie" and "dear" to be "terms of diminishment," and that, within the broader context of his other sexualized overtures, the use of these terms created a poisoned work environment and violated a woman's right to be free from discrimination in employment.

Example 2: When a co-worker ended a romantic relationship with him, a man showed intimate cell-phone photographs of her to several people in their workplace. His supervisor heard that other people had seen the pictures, but he did not see them himself, and chose not to intervene in what he saw as a personal matter – even though he had a legal duty to do so.

Example 3: A hiring team at a law firm was conducting interviews for articling student positions. A senior partner walking by the room where candidates were waiting to be interviewed, pointed at a young female candidate and said to a female member of the hiring team "hire her, she's easy on the eyes." This comment created a poisoned environment for both the potential candidate and the woman on the hiring team.

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What is NOT Considered Sexual Harassment

In addition to understanding what sexual harassment is, it is also important to understand what sexual harassment is not.

- Consensual relationships between adult co-workers are not regarded as sexual harassment.
- Reciprocal flirting – playful, nonphysical flirting that is engaged in by both parties – is also generally not termed sexual harassment.

Don't forget that employers have a responsibility for sexual harassment committed by third parties in the workplace. Third parties can include contractors, customers, clients, service, repair, or delivery people. And finally, an employer may also be held liable for sexual harassment involving activities or events that happen outside of normal business hours or off business premises, but are linked to the workplace and employment.

Example 1: An employer was found liable for the sexual harassment of its employees in the workplace by a service technician who was on-site to fix office equipment.

Example 2: A restaurant manager made repeated, explicit, and intimate advances and comments of a sexual nature to a waitress. Some of the comments were made during an after-hours card game with co-workers, and some were communicated in a text message and a voicemail sent while he was at a late-night party attended by other male staff members. The tribunal concluded that while not all the incidents occurred at work or during work hours, they were sufficiently connected to the workplace.

https://www.ohrc.on.ca/en/policy-preventing-sexual-and-gender-based-harassment/8-preventing-and-responding-sexual-harassment-0

What You Should Do

1. Have and post a written sexual harassment policy that defines sexual harassment, reporting procedures, and disciplinary actions.
2. Communicate to everyone in an organization there is zero tolerance for harassment of any kind.
3. Train workers and supervisors on sexual harassment – what it is, what it is not, examples, reporting procedures, their rights (including the right to a harassment free workplace), and responsibilities.

Final Word

Reported incidents of sexual harassment in the workforce are on the rise, as are demands for employers to do the right thing and protect workers against all forms of harassment.