



Workplace Harassment

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Workplace Harassment

In the workplace, when we hear the word “harassment” many of us think only of sexual harassment. However, illegal harassment can also occur based on an employee’s race or color, religion, national origin or disability. Harassment training is not required under federal law. While many states have enacted legislation specifically requiring sexual harassment training, none have mandatory training for other types of illegal harassment. Even if not required by law, court decisions and Equal Employment Opportunity Commission (EEOC) Guidelines make clear that training for all types of harassment may be critical in raising a defense and avoiding punitive damages in harassment lawsuits.

At the close of this session, you will be able to:

1. Define harassment.
2. Explain the difference between illegal harassment and conduct or behavior that is inappropriate and unprofessional and often referred to as harassment but that is not illegal.
3. State the importance of preventing harassment in the workplace.
4. List the categories of harassment.
5. Cite the laws that prohibit and provide protection against harassment.
6. Describe the MOPH policy and procedures on harassment.
7. Understand your responsibilities as supervisors and staff for handling or reporting complaints and assisting in investigations and follow up action.

Harassment (Race/Color, Religion, National Origin and Disability)

In the employment and legal context, harassment is defined as conduct or actions, based on race, religion, sex, national origin, age, disability, military membership or veteran status, severe or pervasive enough to create a hostile, abusive or intimidating work environment for a reasonable person.

State laws may further define harassment to include additional protections, such as sexual orientation, marital status, trans-sexualism or cross-dressing, political affiliation, criminal record, prior psychiatric treatment, occupation, citizenship status, personal appearance, "matriculation," tobacco use outside work, Appalachian origin, receipt of public assistance or dishonorable discharge from the military.

What is “Harassment” ?

Harassment is:

- A form of discrimination that violates Title VII of the Civil Rights Act of 1964.
- Unwelcome verbal or physical conduct based on a person’s race, color, religion, sex or gender, national origin, age (40 and over), and disability (mental or physical).
- Severe, pervasive and persistent conduct that unreasonably interferes with an employee’s work performance or creates an intimidating, hostile or offensive work environment.
- An occurrence where an employee’s status or benefits are directly affected by the harassing conduct of a manager or person of authority.
- Adverse employment actions (retaliation) against employees who complained of harassment or discrimination or who participate in a complaint procedure.

Illegal Harassment versus Inappropriate Conduct or Behavior

- In the workplace and as used in this presentation, the term “harassment” refers to the illegal form of discrimination.
- Employees often say they are being harassed, however, when they are subjected to inappropriate conduct or behavior which is not illegal but unacceptable in the workplace.
- The term frequently used to describe this type of behavior and conduct is **workplace bullying**.
- Workplace bullying is repeated mistreatment of one or more employees using humiliation, intimidation and denigration of performance. Bullying behavior can exist at any level of an organization. Bullies can be superiors, subordinates, co-workers and colleagues.

Illegal Harassment versus Inappropriate Conduct or Behavior (cont'd)

Examples of **workplace bullying** include:

- Social bantering or teasing.
- Verbal abuse and profanity, humiliation, constant criticism.
- Gossip.
- Prolonged hostile looks and stares.
- Stealing the credit for work performed by the victim.
- Personal and professional denigration.
- Overt threats.
- Assignment of unrealistic workloads.
- Aggressive e-mails or notes.
- Professional exclusion or isolation.
- Sabotage of career and financial status.

Group Discussion

- A supervisor in the accounting department constantly and publicly criticizes his employees and calls them stupid and lazy. Is this illegal harassment or workplace bullying? Explain your answer.
- The same accounting supervisor refers to one of his employees as an “old gal” who is “over the hill” and has problems using a computer because of her age. Illegal harassment or workplace bullying? Why?

Why is it important to prevent harassment in the workplace?

- Harassment harms us all. The most important part of our values is that all employees are treated with respect and dignity. Engaging in, condoning, not reporting any type of harassment is in direct conflict with our values.
- Compliance with Title VII of the Civil Rights Act which prohibits this form of discrimination.
 - Compliance with similar state civil rights laws and fair employment laws.
 - Liability for the employer may be under federal or state law or civil litigation. A company is always responsible for harassment by a supervisor that results in a tangible employment action such as a hiring, firing, promotion, demotion, change in pay or benefits, and work duties.

What is Sexual Harassment?

- Unwelcome sexual advances.
- Requests for sexual favors.
- Other verbal or physical conduct of a sexual nature that affects an individual's employment, unreasonably interferes with his/her work performance, or creates an intimidating, hostile or offensive work environment.

Two Forms of Sexual Harassment

Two forms of sexual harassment:

- Quid Pro Quo
 - (Latin for “this for that” or “something for something”)
- Hostile Work Environment

Quid Pro Quo

- Tangible employment action against the victim.
- Involves monetary loss or change in job.
- Example: Mary Smith receives smaller pay increase based on performance than other employees with similar performance because she refused to go out with her supervisor, John Doe.

Hostile Work Environment

- Speech or conduct that is severe and/or pervasive enough to create an abusive or hostile work environment.
- Example: Mike Maloney is leering (elevator eyes) at and intentionally brushing against Sally Davis.

Hostile Work Environment (cont'd)

- **In addition to speech and/or conduct, covers explicit or suggestive items displayed in the workplace that interfere with job performance or that create an abuse or hostile work environment**
- Example: Jill Jones has a 9" x 12" calendar of nude males on her cubicle wall visible to passersby.

Who can be involved in sexual harassment?

- Those who commit – employees at all levels, customers, members of the same sex.
- Those who are targeted – victims, bystanders and, in some cases, witnesses who are affected by the harassment.

Categories of Harassment (other than Sexual Harassment)

Race/Color

- Ethnic slurs or jokes, offensive or derogatory comments, or other verbal or physical conduct based on an employee's race/color constitutes harassment if that conduct creates an intimidating, hostile or offensive work environment and prohibits an employee from performing their job.

Religion

- Harassment based on religion occurs when an employee is antagonized or ridiculed because of his religious beliefs. Another type of religious harassment occurs when a co-worker or supervisor “preaches” or proselytizes to an employee and the employee perceives that behavior to be unwanted and offensive, amounting to a hostile work environment. To avoid claims of religious harassment, employers also must reasonably accommodate an employee's sincerely held religious practices unless it would impose an undue hardship on their business.

Categories of Harassment (other than Sexual Harassment) (cont'd)

National Origin

- Discriminating because of birthplace, ancestry, culture or linguistic characteristics common to a specific ethnic group. Discrimination from requiring employees to speak only English unless an employer shows that the requirement is necessary for conducting business.

Disability

- The Americans With Disabilities Act (ADA) prohibits workplace discrimination on the basis of disability. Under this law, when a disabled worker is constantly subjected to pervasive and severe harassment due to his disability that creates a hostile work environment, compensatory damages and punitive damages can be sought against the employer.

Laws that Prohibit and Provide Protection against Harassment

- **Title VII of the Civil Rights Act of 1964** covers all private employers, state and local governments and educational institutions that employ 15 or more individuals. It prohibits intentional discrimination and practices because of a person's race, color, religion, sex or national origin.
- **Americans with Disabilities Act 1990** requires employer accommodations for individuals with disabilities.
- **Equal Pay Act of 1963** protects men and women who perform substantially equal work in the same establishment from sex based discrimination.

Laws that Prohibit and Provide Protection against Harassment (cont'd)

- **Immigration Reform and Control Act 1986, 1990, 1996** establishes penalties for employers who knowingly hire illegal aliens, prohibit employment discrimination on the basis of national origin or citizenship.
- **Age Discrimination of Employment Act of 1967** protects individuals who are 40 years and older.
- **Civil Rights Act of 1991** provides for damages in cases of intentional employment discrimination, to clarify provisions regarding disparate impact actions, and for other purposes.

Our Policy & Procedure on Harassment

MOPH strives to maintain an environment free from discrimination and harassment, where employees treat each other with respect, dignity and courtesy. This policy applies to all phases of employment, including, but not limited to, recruiting, testing, hiring, promoting, demoting, transferring, laying-off, terminating, paying, granting benefits and training.

Prohibited Behavior

MOPH does not tolerate any type of harassment of its employees, applicants for employment or service, our membership or the veterans we serve. Discriminatory conduct or conduct characterized as harassment as defined below is prohibited.

The term “harassment” includes, but is not limited to; slurs, jokes, and other verbal or physical conduct relating to a person's gender (including pregnancy), race, color, religion, national origin, age, disability, military status, marital status or any other protected category under federal, state or local law that unreasonably interferes with a person's work performance or creates an intimidating, hostile work environment.

Our Policy & Procedure on Harassment (cont'd)

Sexually harassing behavior in particular includes unwelcome conduct such as: sexual advances, requests for sexual favors, offensive touching, or other verbal or physical conduct of a sexual nature. Such conduct may constitute sexual harassment when it:

- is made an explicit or implicit condition of employment;
- is used as the basis for employment decisions;
- unreasonably interferes with an individual's *work* performance; or
- creates an intimidating, hostile or offensive working environment.

MOPH Policy & Procedure on Harassment

(cont'd)

The types of conduct covered by this policy include: demands or subtle pressure for sexual favors accompanied by a promise of favorable job treatment or a threat concerning employment.

Specifically, it includes sexual behavior such as:

- repeated sexual flirtations, advances or propositions;

MOPH Policy & Procedure on Harassment

(cont'd)

- Continued and repeated verbal abuse of a sexual nature, sexually related comments and joking, graphic or degrading comments about an employee's appearance or displaying sexually suggestive objects or pictures including cartoons and vulgar e-mail messages; and any uninvited physical contact or touching, such as patting, pinching or repeated brushing against another's body.

MOPH Policy & Procedure on Harassment

(cont'd)

Such conduct may constitute sexual harassment regardless of whether the conduct is between members of management, between management and staff employees, between staff employees, or directed at employees by non-employees conducting business with MOPH, regardless of gender.

Complaint Procedure and Investigation

Any employee who wishes to report a possible incident of sexual harassment or other unlawful harassment or discrimination should promptly report the matter to their immediate supervisor. If that person is not available, or you believe it would be inappropriate to contact that person, contact the National Service Director (NSD) or the National Adjutant. MOPH will conduct a prompt investigation as confidentially as possible under the circumstances. Employees who raise concerns and make reports in good faith can do so without fear of reprisal; at the same time, employees have an obligation to cooperate with MOPH in enforcing this policy and investigating and remedying complaints.

Summary

- Harassment is conduct or actions, based on race, religion, sex, national origin, age, disability, military membership or veteran status, severe or pervasive enough to create a hostile, abusive or intimidating work environment for a reasonable person.
- Inappropriate conduct or behavior which is not illegal but unacceptable in the workplace is called workplace bullying, defined as repeated mistreatment of one or more employees using humiliation, intimidation and denigration of performance.
- It is important to prevent harassment in our workplace because it harms us all. It conflicts with our corporate values and is illegal under federal and state laws.

Summary (cont'd)

Your responsibilities as supervisors are to:

- Know and comply with our policy and procedures.
- Immediately report any complaints you receive or incidents you witness to the Human Resources.
- Handle complaints from your employees in accordance with our policy and procedures.
- Never retaliate against an employee who complains of harassment.
- Assist with investigations and disciplinary action.
- Assure that victims are not adversely affected.
- Make sure that harassment stops and does not recur.

Summary (cont'd)

Staff responsibilities regarding prevention of sexual harassment at MOPH are to:

- Know and comply with our policy and procedure.
- Report incidents that you experience directly or witness.
- Cooperate with investigations.
- Support victims.