



Sexual Harassment in the Workplace

An Overview for Legislative Staff and Lobbyists

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What is sexual harassment?

A quick review...



Legal Sources

- Federal law - Title VII
- State law – PHRA
- Local laws



Sexual Harassment and Discrimination

- Quid Pro Quo
- Hostile Work Environment



Quid Pro Quo

“This for that”

Makes submission to sexual conduct, or rejection of sexual conduct (either directly or indirectly) a condition of employment or the basis of an employment decision



Quid Pro Quo

- “If you have sex with me, I’ll give you a raise.”
- “If you don’t have sex with me, you won’t get the raise.”



Quid Pro Quo

Occurs with actions directly or indirectly from managers, supervisors, executives, etc. since there is control over employment conditions.



Hostile Work Environment

**Severe
or
Pervasive**



Hostile Work Environment

Occurs with actions directly or indirectly from anyone related to the workplace on-site or off-site:

- supervisors, managers
- peers
- independent contractors
- lobbyists, constituents
- vendors, repair personnel



Hostile Work Environment - Scope

- Unwelcomed touching
- Propositions and flirtation
- Jokes and humor
- Leering
- Comments about attire
- Posters, e-mail and websites
- Sexual questions, comments



Unintended Contact

What happens if someone is “accidentally” exposed to offensive comments or behavior?

Examples:

- finds copy on the machine
- has email or text forwarded to them
- overhears conversation
- sees note left on someone else’s desk



Social Media

- Email
- Text
- Facebook
- Twitter
- Instagram
- Blogs
- Review sites



Location

Sexual harassment can occur

- at work
- at company functions and social events (and before and after)
- non-work events with co-workers
- high risk locations (e.g. hooters)



Other Harassment and Discrimination

Sensitivity To All Protected Classes

Same for age; disability; all Title VII and/or state and local laws protected classes (race, color, religion, gender and national origin); veteran status; GED diploma; sexual orientation



Other Harassment and Discrimination

Sensitivity Generally

Not protected by law, but still sensitive, for example:

- Political speech
- Socio-economic status
- Regional differences (city, state, country)
- Almost any subject!



Complaints

No “informal complaints”

Complain or don't complain:
do not make an “informal”
complaint by asking
someone not to take action.
They will anyway.



Complaints

Take the complaint seriously

Means no rejection or demeaning of the complaint



Complaints

When a complaint is made...

- ❖ Consult
- ❖ Investigate
- ❖ Document
- ❖ Remediate



Complaints – Consult

Consult

- HR Department
- In-house or outside counsel
- Designated management



Complaints – Consult

Discuss immediate action such as:

- Removing harasser / suspension
- Warning harasser against retaliation
- Contacting the police



Complaints – Consult

Contact the police:

- Any imminent threat
- Workplace violence
- Sexual or other assault
- Hostile situation
- Out of control employees dangerous to themselves or others
- Any time you deem it necessary!



Complaints - Investigate

Investigate

- Extent of investigation depends on circumstances
- Don't promise "confidential process"
- Develop a plan of the investigation



Complaints - Investigate

- Investigator should be neutral
- Investigate facts only, does not make recommendations
- Produce a written report



Complaints - Document

Document

- From complainant
- Interviews
- Other documents (emails, warnings)
- Remedies



Complaints -Remediate

Remediate

Discipline depends on the circumstances (severity and frequency of the offense; prior history; personalities of those involved)



Complaints -Remediate

Remediate

- Does the punishment fit the crime?
- Will the remedy stop the behavior?
- Complied with policies?



No Retaliation

- No retaliation for making good faith, true and accurate complaint (even if wrong!)
- Alleged harasser must not retaliate at any time



No Retaliation

Acts of retaliation have a broad scope; they include *anything* that might deter someone from complaining



Prevention

Review/revise your internal policies.

A written policy is “required” by regulations, U.S. Supreme Court cases, EEOC guidelines and more



Written Policy

A Good Policy...

- Expresses the employer’s intent to prevent and remedy harassment and discrimination
- Defines harassment and discrimination and provides examples
- Describes the complaint procedure
- Promises no retaliation



Written Policy

A Great Policy...

- Has everything the good policy has, except that it actually gets published to the employees and
- Is actually followed by managers, supervisors, Human Resources, etc.



Written Policy

A Dangerous Policy...

- Contains unnecessarily specific complaint and investigation procedures
- Uses “zero tolerance” language
- Over promises remedies, e.g. “immediately investigated” or “harasser will be terminated”
- Promises a written report to the complainant



Prevention

Revisit training for employees and managers...



Training

- Train rank and file employees
- Train managers and supervisors
- In-person
- Every few years
- Have a system for training new employees



State Legislatures

Elected officials
cannot be
disciplined or
fired in the
same manner
as employees

State Legislatures

California

Since October 2017

- 140 legislators, staff and lobbyists complained of sexual harassment
- 2 Assemblymen and one Senator resigned
- 5 additional complaints



State Legislatures

California

- Independent investigators and an HR consulting firm were hired by the Senate
- Joint Sub-Committee on Sexual Harassment Prevention and Response recommendations



State Legislatures

California

- Legislation enacted to impose civil and criminal liability on legislators and staff who interfere or retaliate against a complainant



State Legislatures

Missouri

Since 2015

- House Speaker and a Senator resigned
- State Representative accused another legislator of sexual assault
- Senator accused State Representative of sexual harassment



State Legislatures

Missouri

- Updated sexual harassment and intern policies
- Required training for members and staff
- Banned romantic relationships between members and staff or interns



State Legislatures

Missouri

- Ethics Committee can take disciplinary action against members



State Legislatures

New York

Since 2006

- 2 Assemblymen have resigned
- 6 Members of the Assembly have been sanctioned
- 1 complaint against a Senator



State Legislatures

New York

- 8 lawsuits
- \$648,000 in settlements
- \$430,000 in fines



State Legislatures

New York

- Joint Commission on Public Ethics sexual harassment, corruption and nepotism complaint hotline
- Revised sexual harassment policy
- In-house counsel no longer handles complaints
- Working group recommendations

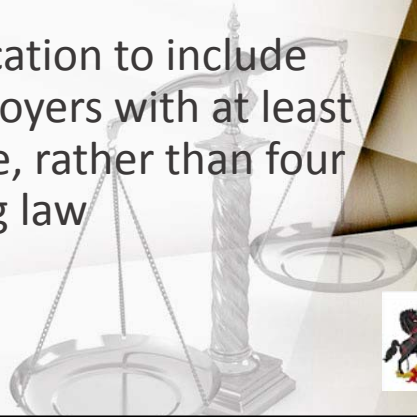


Pending Legislation

Pa. Human Relations Act

SB 1146, HB 1971, HB 2280

- Expand application to include covered employers with at least one employee, rather than four under existing law



Pending Legislation

Pa. Human Relations Act

SB 1146, HB 2286

- Extend the statute of limitations for filing a complaint with the PHRC from 180 days to 2 years

SB 1146, HB 2286

- Add the right to a jury trial



Pending Legislation

Pa. Human Relations Act

SB 1146, HB 2286

- Provide for punitive damages in cases of malice or reckless indifference

SB 1146, HB 2286

- Provide for the award of attorneys fees to a prevailing plaintiff



Pending Legislation

Pa. Human Relations Act

SB 1147, HB 2282

- Require biennial, interactive training

SB 1147, HB 2283

- Require more detail on the PHRC's fair employment practices notice



Pending Legislation

Pa. Human Relations Act

HB 2475

- Requires employers to adopt written policies preventing harassment, discrimination and retaliation



Pending Legislation

Lobbying Disclosure Law

SB 1151, HB 2285

- Require the Department of State to develop training session for lobbyists
- Add unlawful discriminatory or harassing practices to the list of prohibited activities for lobbyists



Pending Legislation

Fiscal Code

HB 2069, HB 2624

- Prohibit expenditures for settling sexual harassment claims against public officials or public employees



Pending Legislation

House Rules

HR 612, HR 1117

- Require harassment and discrimination training for House members each session
- HR 1117 authorizes the House Ethics Committee to investigate complaints against members



Pending Legislation

Task Forces and Studies

HR 684, HR 828 (adopted)

- Establish a Task Force to study workplace harassment

HR 829 (adopted)

- Directs the Joint State Government Commission to analyze the prevalence of workplace harassment in state agencies



Pending Legislation

Legislature

HB 1965

- Establishes an independent Office of Compliance to receive, investigate and resolve sexual harassment complaints
- Requires members to pay their own settlement costs
- Requires mandatory prevention and response training

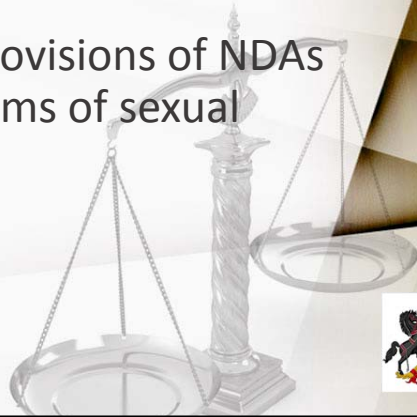


Pending Legislation

Nondisclosure Agreements

SB 999

- Prohibiting provisions of NDAs related to claims of sexual harassment



Pending Legislation

Nondisclosure Agreements

SB 999 Amendment

- Prohibits employment contracts or settlement agreements
- Prohibited unless the claimant voluntarily agrees and has full understanding of the terms
- Prohibits retaliation for refusal to enter into a NDA



Nondisclosure Agreements

- In 2018, at least 16 states introduced legislation prohibiting or restricting the use of NDAs or forced arbitration clauses in relation to sexual harassment
- Six states have enacted bills limiting NDAs: Arizona, Maryland, New York, Tennessee, Vermont and Washington

Due Process

“No person shall be...deprived of life, liberty, or property, without due process of law”