



Workplace Harassment

An emphasis on Sexual Harassment

Dynamics,
Prevention,
Vicarious Liability

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Objectives:

▶ Objective:

- ▶ *Learn:* courts have established some clear guidelines for employers to consider
- ▶ *Learn:* concept of vicarious liability – that employers are responsible for the acts of its supervisors
- ▶ *Learn:* to establish an environment that is strong against sexual harassment by emphasizing prevention
- ▶ *Take Away:*
 - Context of sexual harassment law
 - Key elements of strong policy
 - An employer is responsible for the acts of its supervisors

Employers should:

Emphasize prevention:

- Strong written policy
- Train ALL employees on the policy

Respond quickly:

- Investigate
- Correct
- Report

Employees should:

- Know the policy
- Document and Report



Key Cases/Events:

- ▶ 1976 - **Williams v. Saxbe**
- ▶ 1986 - **Meritor Savings Bank v. Vinson**
- ▶ 1991 - **Clarence Thomas hearings**
- ▶ 1993 - **Harris v. Forklift Systems**
- ▶ 1998 - **Faragher v. City of Boca Raton**
- ▶ 1998 - **Ellerth v. Burlington Industries**
- ▶ 1998 - **Oncale v. Sundowner Offshore Services, Inc**
- ▶ 1999 - **EEOC issues guidelines**

Types of Sexual Harassment



- ▶ Quid Pro Quo
- ▶ Hostile Environment



Behaviors

▶ **Verbal or written:**

Comments about clothing, personal behavior, or a person's body; sexual or sex-based jokes; requesting sexual favors or repeatedly asking a person out; sexual innuendoes; telling rumors about a person's personal or sexual life; threatening a person

▶ **Physical:**

Assault; impeding or blocking movement; inappropriate touching of a person or a person's clothing; kissing, hugging, patting, stroking

▶ **Nonverbal:**

Looking up and down a person's body; derogatory gestures or facial expressions of a sexual nature; following a person

▶ **Visual:**

Posters, drawings, pictures, screensavers or emails of a sexual nature

County Level Totals

for full time employees

	% Female	% Male
Total Composition	53.1	46.9
Top Salary Bracket	36.0	64.0
Bottom Salary Bracket	59.9	40.1
Median Salary	\$35,025	\$40,689

Officials/Administrators

for full time employees

	% Female	% Male
Total Composition	38.2	61.8
Top Salary Bracket	31.8	68.2
Bottom Salary Bracket	32.4	67.6*
Median Salary	\$61,290	\$68,592

Administrative Support,

State and Local full time employees

	% Female	% Male
Total Composition	86.3	13.7
Top Salary Bracket	63.7	36.3
Bottom Salary Bracket	82.1	17.9
Median Salary	\$30,437	\$32,290

Financial Administration,

State and Local: full time employees

	% Female	% Male
Total Composition	61.3	38.7
Top Salary Bracket	39.8	60.2
Bottom Salary Bracket	55.9	44.1
Median Salary	\$38,798	\$49,388

\$15 Million

Janet Bianco v.
Flushing Hospital and
Dr. Matthew Miller

Feb 2009

Single plaintiff suit
New York State





Vicarious Liability

Employers are responsible for actions of its supervisors, who are its agents



Two Types of Discrimination

1) when supervisor's harassment results in tangible employment action (employer is ALWAYS liable)
tangible employment action: significant change in employment status (EEOC, p. 6)

- hiring/firing
- promotion and failure to promote
- demotion
- undesirable reassignment
- decision causing significant change in benefits
- compensation decisions
- work assignment

Two Types of Discrimination

- 2) supervisor's discrimination does NOT result in tangible employment action (**hostile environment**)
- ▶ In these cases, **AFFIRMATIVE DEFENSE** MUST contain two elements:
 - employer exercises *reasonable care* to prevent and correct promptly an harassing behavior
 - employee [claimant] **unreasonably failed to take advantage of any preventive** or corrective opportunities provided by the employer or to avoid harm otherwise (US EEOC 199:3-4)

Elements of Effective Policy:

▶ **Prohibition Against Harassment:**

Clear explanation of prohibited conduct

▶ **Protection Against Retaliation**

Assurance that employees who make complaints of harassment

Elements of Effective Policy:

▶ **Effective Complaint Process**

Clearly described complaint process that provides accessible avenues of complaint



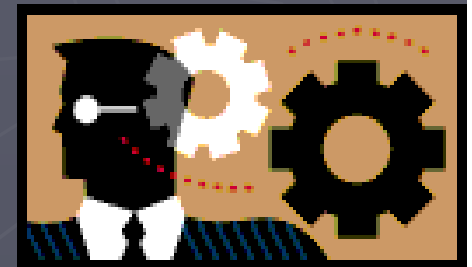
▶ **Confidentiality**

Assurance that employer will protect the confidentiality of harassment complaints to the extent possible

Elements of Effective Policy:

▶ **Effective Investigative Process**

Complaint process that provides prompt, thorough, impartial investigation



▶ **Assurance Of Immediate And Appropriate Corrective Action**

Assurance that employer will take immediate and appropriate corrective action when it determines that harassment has occurs

Policy checklist:

About Definition of Sexual harassment:

- ▶ Included in policy
- ▶ Conforms to EEOC language



Strate, J; Jung, T.H.; and Leidlein, J. (2008). Sexual Harassment! What's a local manager to do?. Department of Political Sciences; Wayne State University, 2008.

Policy checklist:

About complaints:

- ▶ Supervisors must report all complaints
- ▶ Supervisors are evaluated on handling complaints
- ▶ Provides for multiple reporting options

About specific time requirements:

- ▶ for filing complaints
- ▶ for beginning investigation
- ▶ for reporting findings



Policy checklist:

About Training:

- ▶ Required for
Employees
Supervisors
Top management
- ▶ Includes definitions
- ▶ Covers processing of complaints
- ▶ Covers interviewing and investigation
- ▶ Document completion per employee



Policy checklist:

About investigations:

- ▶ Specify composition of investigation team
- ▶ Investigation team composed of both genders

About Confidentiality:

- ▶ Confidentiality requirements
- ▶ Sanctions for breach of confidentiality



Policy checklist:

About Retaliation:

- ▶ Language prohibiting retaliation
- ▶ Sanctions for retaliation



Filer Friendly inclusions:

- ▶ No requirements for complainant to meet with accused
- ▶ Require that complainant receive findings of investigation
- ▶ Require that complainant is informed of findings and remediation

Summary

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