

SEXUAL HARASSMENT IN THE WORKPLACE: DON'T TAKE IT

November 21, 2008 by Heather Huhman

As someone who has been sexually harassed in two different workplaces in my past, I feel it is important to outline what is and is not appropriate and provide the best course of action if you feel it is happening to you. The U.S. Equal Employment Opportunity Commission (EEOC) defines sexual harassment as “unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature...when submission to or rejection of this conduct explicitly or implicitly affects an individual’s employment, unreasonably interferes with an individual’s work performance or creates an intimidating, hostile or offensive work environment.”

Approximately 12,500 charges of sexual harassment were brought to the EEOC in Fiscal Year 2007, 16 percent of which were filed by males. Yes, males can be sexually harassed, too. These numbers are likely well beneath actual occurrences because, like most charges of a sexual nature, many incidences go unreported.

Examples of Sexual Harassment

1. Quid pro quo. “The boss says, ‘sleep with me and you’ll get a raise’ or ‘if you don’t sleep with me you’ll get fired,’” said Scott I. Barer, a labor and employment law attorney at the Law Offices of Scott I. Barer.

2. Hostile work environment. “For example, a workplace that regularly plays a radio program featuring fre-

quent vulgar references to sexual activities, sex acts and body parts can be a hostile environment,” said Andrew Milne, a senior counsel with Garson Claxton LLC. “In April of this year, a woman successfully sued her employer based on her daily exposure to such a radio show, despite her repeated requests that the program not be played in her workplace. The court concluded that the offensive comments were unwanted, sexual in nature and offensive to women generally, and the daily broadcast of the show in her workplace

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made the offensive conduct pervasive enough to be sexual harassment.”

There are many other examples of a hostile work environment. For example, says Roberta Chinsky Matuson, president of Human Resource Solutions, telling unwelcomed jokes of a sexual nature. “If the other person finds the joke offensive, and it makes the work environment uncomfortable, then this would be considered creating a hostile work environment.”

Examples of Behavior Often Mistaken for Sexual Harassment

1. Consensual dating, joking and touching. “Only unwelcome conduct can be sexual harassment,” said Ma-

tuson. “However, it should be noted that often times things start out one way and end up another. For example, you may decide it is okay if you date your boss and he or she touches you at work. If the relationship should end, you may no longer feel it is okay for this behavior to continue. If you ask the person to stop, and they continue to do so, then you are being sexually harassed. Of course it is more difficult to prove this if you have already had a consensual relationship. That is why it is advisable to resist the temptation of dating your boss.”

2. “You look nice today.”

“The boss says to his assistant, ‘You look nice today. That’s a great outfit.’ There, he has not acted unreasonably by complimenting his assistant. But,

the boss should not take it to an extreme and say something like, ‘That’s a great outfit. It really makes your legs look sexy.’ Also, the boss should not compliment the employee so often so as to make her feel uncomfortable. But, an occasional compliment would be permitted, and maybe even welcomed by his assistant,” said Barer. “If the boss makes even a single, innocuous compliment, and the employee asks him to stop, he should do as requested.”

3. Open criticism. “For example, if a male supervisor yells at a female subordinate in front of other people in the office for poor performance, and the female employee gets embarrassed, that is not harassment,” said Beth Hinsdale, a partner with Fox Rothschild in the

labor and employment practice group.

4. Crude language. “Swearing in the workplace is not harassment,” said Anne Caldwell, president of Outsourcing Solutions.

5. Isolated or infrequent vulgar acts. “Isolated comments and infrequent touching, even if unwanted, may not be unlawful sexual harassment,” said Milne. “In one recent case, the court decided sixteen instances of offensive conduct in four years was not severe or pervasive. It did not matter that the offensive conduct included several instances of unwanted touching and three unwanted attempts to kiss the victim. Should such conduct be reported to an employer? Absolutely, and the employer should take steps to stop it. But, hostile environment lawsuits are not easy, and not all offensive sexual conduct is going to result in successful court case for the victim.”

“Another example is someone asking you out, and you saying no. If it happens once, it is not harassment,” said Erica Pinsky, CHRP, B.A., M.Sc., Cert-ConRes, principal consultant at Erica Pinsky Inc. “Or, if someone compliments you once, it is not sexual harassment. This is because, again, we usually are looking for a pattern of behavior that has consequences for the person at work.”

6. Asked to work late...in exchange for dinner. “Suppose a male supervisor asked a female employee to work late, and he told her that he would buy her dinner for her trouble. That is not sexual harassment,” said B. Allison Borkenheim, an attorney at Procopio, Cory, Hargreaves & Savitch LLP. “He has not requested sexual favors and conditioned the terms of her employment or employment opportunities on sexual favors. He simply offered to feed her as a thank you for her hard work.”

Action Steps

Don't allow a supervisor or cowork-

er sexually harass you – period. As I previously stated, I have been the victim of sexual harassment in two different workplaces. In one instance, I had to go to step six listed below in order to resolve the problem. In the other situation, I actually had to leave the organization because not enough was being done. Sexual harassment is typically about power. Don't let these individuals have power over you.

1. Confront the offender. “Interns and entry-level employees, like all

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employees, should first try to resolve the matter directly with the offender,” said Lily M. Garcia, Esq., SPHR, a human resource professional and employment discrimination attorney.

2. Identify your allies. What if confrontation makes you extremely uncomfortable or you fear your job is at risk if you confront the offender?

“This is certainly a valid concern, and where HR or a sympathetic manager can help. Many members of management are sensitive to sexual harass-

ment issues, and will take any such complaints very seriously. The employee should actively seek out a senior level member of the company – even if not in his or her department – and air the issues,” said Josh King, vice president of business development and general counsel for Avvo, Inc.

3. Put it in writing. “Keep a log of situations where you have felt harassed. Be sure to note time and dates along with your response to this behavior,” said Matuson.

4. Consult the organization's sexual harassment policy. “Most policies provide for multiple avenues of recourse, including your immediate supervisor, senior members of management, the human resources department, and anonymous complaint hotlines,” said Garcia.

Milne adds, “If there is no written sexual harassment policy, then the company's human resources department is the group most likely to understand the legal requirements in this area. An employee usually should involve his or her immediate supervisor in resolving sexual harassment, unless the supervisor is the source of the harassment, an active contributor to the ‘hostile environment’ or has clearly expressed or implied hostility toward sexual harassment claims.”

5. File a complaint. “Employees should use the complaint procedure offered by their employer's policies. If they do not, the employer will often have a defense to harassment complaints,” said Hinsdale.

6. Look for consultation outside the organization. “If an employer does not have an effective sexual harassment policy, or doesn't actually follow their written policy or investigate allegations of sexual harassment, employees can seek guidance from the local offices of the EEOC, state agencies that handle employment discrimination matters and private attorneys,” said Milne.