

Preventing and Addressing Sexual Harassment in the Workplace

Welcome to CAPS!



Goals

Define sexual harassment.

Define how sexual harassment relates to discrimination in the workplace.

Promote a working environment that actively discourages the occurrence of sexual harassment.

Goals

Promote a working environment that actively discourages behavior that could be viewed as discriminatory.

Promote a working environment where all employees are treated with respect.

Sexual Harassment



Agenda

What is “Sexual Harassment?”

What are State of Vermont’s Policies, Procedures, and Cases?

What is your role?

Ground Rules



Welcome and Introductions

- ① Your name
- ② Your position
- ③ When I come to work I most look forward to _____ because _____.

What is Sexual Harassment?



What is Sexual Harassment?

The Law

A form of sex discrimination when

- a) sexual advances or
- b) speech or conduct that creates a hostile work environment

create an artificial barrier to employment placed before one gender and not another

[*Williams v. Saxbe*, 413 F. Supp. 654 (D.D.C. 1976) and *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986)].

What is Sexual Harassment?

The Law

Sex discrimination is prohibited by federal *and* state law

- U.S. Civil Rights Act of 1964 Title VII prohibits employment discrimination based upon “race, sex, color, national origin, or religion” (42 U.S.C. § 2000, et seq)
- Vermont Fair Employment Practices Act
 - Prohibits employment discrimination based upon race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, age, disability, or HIV status
21 V.S.A. §495.

What is Sexual Harassment?

The Law

- Equal Employment Opportunity Commission (EEOC) Definition:
 - “**Unwelcome** (emphasis added) sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when 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.” 29 C.F.R. § 1604.11

What is Sexual Harassment?

Two Types

- **Hostile Work Environment**
 - When speech or conduct is so **severe** and **pervasive** that it creates an intimidating or demeaning environment or situation that negatively affects a reasonable person's job performance
- **Quid Pro Quo (“this for that”)**
 - When expressed or implied demands for sexual favors are made in exchange for some workplace benefit (e.g., a promotion, pay increase) or to avoid some workplace detriment (e.g., termination, demotion) (**sexual harassment claims**)

Hostile Work Environment

- **Severe** and **pervasive** conduct
- **Unreasonable** interference with job performance
- Offensive, intimidating, hostile work environment
- Can be created by anyone in the workplace
- *Harris v. Forklift Sys., Inc.*, 510 U.S. 17 (1993)
 - “So long as the environment would reasonably be perceived, and is perceived, as hostile or abusive... there is no need for it also to be psychologically injurious.”

Quid Pro Quo (“this for that”)

- Most commonly involves a supervisor
- **Threats** - firing, blocking promotion, transferring, or giving a bad evaluation, changing job duties if a person does not submit to sexual advances.
- **Rewards** - hiring, promoting, or giving a raise in exchange for sexual favors.
- *Williams v. Saxbe*, 413 F. Supp. 654 (D.D.C. 1976)
 - Retaliatory actions of a male supervisor, taken because a female employee declined his sexual advances, constitutes sex discrimination within the definitional parameters of Title VII of the Civil Rights Act of 1964

State of Vermont

- SOV Policies and Procedures and VSEA/VTA Collective Bargaining Agreements also specifically prohibit sexual harassment
- Policies 3.1 and 5.6
 - 3.1: “Sexual harassment is a form of discrimination on the basis of sex and is, therefore, prohibited in the work place by both state and federal law.”
- VSEA/VTA
 - Collective Bargaining Agreements
 - Article 5: “No Discrimination, Intimidation Or Harassment”

Workplace Expectations



Examples- What *Not* to Expect From the Workplace

- Sexual jokes
- **Inappropriate** or **unwelcome** questions about employees' personal lives
- Sexual comments about a person's clothing, anatomy, or looks
- Repeated requests for a date
- Sexually oriented cartoons, posters, calendars or pictures
- Sexual gestures or language

Considerations

- The person targeted as well as the harasser may be a woman or a man
- The person targeted does not have to be of the opposite sex
- The harasser can be the targeted person's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee
- The complainant does not have to be the person harassed but could be anyone affected by the offensive conduct (e.g., a member of same protected class as the targeted person)

Blizzard v. Appliance Direct, Inc., 16 So. 3d 922 (2009)

- Discriminatory behavior need not be directed at the complainant in order to support a claim of hostile workplace environment if the complainant is a member of the protected group (**bystander effect**).

Cost and Impact of Sexual Harassment

- Lower Morale
- Absenteeism
- Turnover
- Decreased productivity
- Litigation
- Medical care
- Interfere with working relationships
- Breed mistrust
- Cost \$\$
- You can be *personally* liable for damages!

Employer Liability

- “An employer is always liable for a supervisor's harassment if it culminates in a tangible employment action.”

EEOC

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

Limits to Employer Liability

- Employer may be able to avoid liability or limit damages by establishing an affirmative defense that includes two necessary elements:
 - (a) the employer exercised reasonable care to prevent and promptly correct any harassing behavior, and
 - (b) the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

Supervisor Liability

- Supervisors may be held liable in the following circumstances:
 - When they see or hear about behavior that *may* be sexually offensive
 - When they see or hear about behavior they *know* is sexual harassment
 - When they engage in behavior that is sexually harassing
 - When they delay in taking action
 - When they fail to take action

Manager/Supervisor Duties

- Provide a work place free from sexual harassment
- Inform and discuss policy with all employees
- Make employees aware that sexual harassment will not be tolerated and that prohibition policies will be enforced
- Ensure that charges of sexual harassment will be impartially and immediately investigated
- Ensure that all new employees receive a copy of the policy
- Post the policy and a poster in prominent and accessible locations in the workplace

Manager/Supervisor Duties (cont.)

- When Receiving a Complaint:
 - Listen without judgment
 - Hold conversation in a discreet and private location
 - Assess whether safety concerns are imminent
 - Report complaint to Human Resources
 - Communicate actions taken to the affected employee
 - Document action taken
 - Maintain confidentiality
 - Cooperate during the investigatory process
 - Do not retaliate

Your Role



Employees' Responsibilities

- Know State of Vermont and Federal laws and regulations re: discrimination
 - Know SOV Policy and Policy 3.1
- Report acts of sexual harassment
- It is helpful for the targeted person to directly inform the harasser that the conduct is **unwelcome** and must stop, but *only* if he/she feels safe doing so
 - If the harasser is the targeted person's direct supervisor, this may not be advisable
- Document observations
- Treat all employees, contractors and clients equally and respectfully
- Promote a workplace where employees feel respected and treated equally
- Address complaints and/or observations of discriminatory behavior in a timely manner and to the appropriate parties

Standard Post-Complaint Process (SOV)

- As expeditiously as possible, the appointing authority shall issue a written response to the complainant
- An investigation will be initiated
- Once the investigation is completed, the complainant and the employee accused receive notification/acknowledgement letters (DHR has form letters)
- The investigation and response will typically be completed within thirty (30) days

Factors Considered

- The totality of the circumstances
- The nature and severity of the behavior and the context in which the alleged incidents occurred
- The frequency of the alleged behavior
- All records and materials
- Reasonable Person Standard used

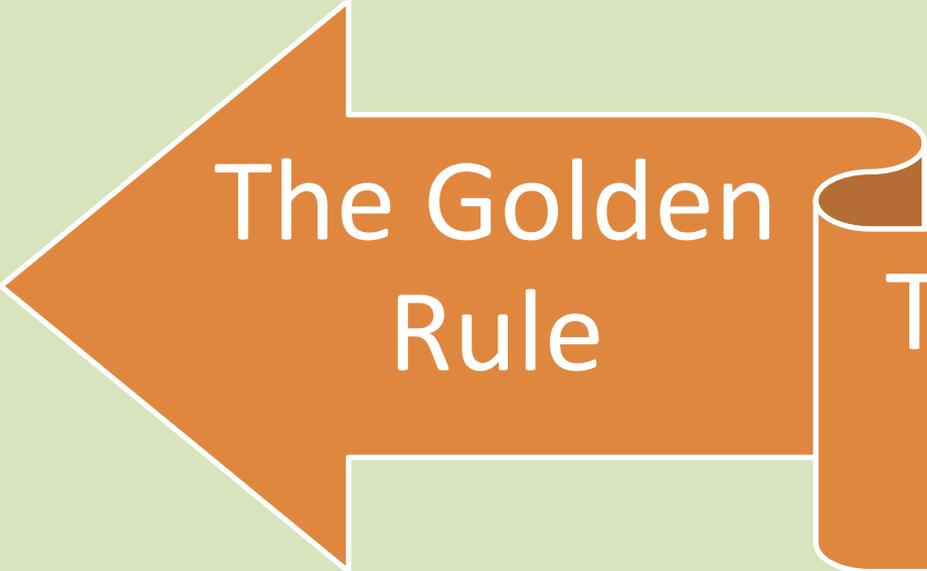
Complaints Procedure & Resources

- Federal Resources
 - EEOC
 - Office for Civil Rights
- State of Vermont
 - Supervisory chain within Dept./Agency
 - Department of Human Resources – HR Representative locator:
<http://humanresources.vermont.gov/about-us/contact/hr-field-representative-locator>
 - VSEA/VTA
 - Attorney General's Office Civil Rights Unit
 - Human Rights Commission

How do I Know What to Do?

- Step 1
 - Do not panic
- Step 2
 - Listen to your gut
 - If you are questioning whether or not a comment/action is appropriate, it likely is *not*
 - Err on the side of caution- it protects you *and* the State
- Step 3
 - If you encounter a situation where you feel caught between a rock and a hard place: ***call your HR rep!***

Cultural Competence



The Golden
Rule



The Platinum
Rule

Applying the Platinum Rule

- Golden Rule
 - Do to others as you would have them do to you
- Platinum Rule
 - Do to others as they would have you do to them
 - **Accept what others tell you about their preferences, even if they do not make sense to you**
- Example
 - Some people may not mind sharing stories from home in the workplace, but if someone shows/says that they do not like to do this, *listen and act accordingly*

Sexual Harassment? Hypothetical Scenario

- Three equal level payroll employees- Joey, Lacy, and Jennifer- all enjoy working together. Jennifer, especially, finds herself drawn to Joey's confident and friendly demeanor. Joey has never talked about his marital status in the workplace but Jennifer suspects he is not married so she asks him out. He politely declines but Jennifer feels they have good chemistry so she plans to ask him again hoping he will change his mind.

Does Jennifer face a dilemma? What should she do?

Quiz

1. Sexual harassment in the workplace includes lewd remarks and sexual calendars. True or False
2. People of the same sex cannot commit sexual harassment against each other. True or False
3. Besides employees who are direct targets, who are the other two groups who may be targets of sexual harassment?

Quiz (cont.)

4. A supervisor's demand for sex from a subordinate in exchange for continued employment is an example of what kind of harassment?
5. A hostile work environment may be intimidating and include sexual jokes. True or False

Quiz Answers

1. True.
2. False. The key here is not sexuality, but that the act is sexual in nature.
3. Bystanders or witnesses to sexual harassment.
4. It is an example of quid pro quo.
5. True.

Take-Away Tips

- Make your feelings known, if it is safe to do so
- Make a formal complaint and document everything
- Be an engaged bystander (“Whoa, no thank you.”)
- Know the State policy- and follow it
- Examine your own behavior, attitudes, assumptions
- Remember: “funny” is not the same for everyone
- Let people tell you about themselves- pay attention to social cues
- Remember why people come to work (e.g., *not* to get hit on)
- If you are in a position of authority (e.g., manager, supervisor) you must
 - take extra care to treat all your direct reports the same (e.g., apply same standards and rules to employees in the same positions)
 - avoid behaviors and comments that show bias toward or against individuals because of their sex or gender identity
 - avoid leveraging your position to bully, manipulate, or exert inappropriate control over your direct reports

Communication and Respect are Key!



Thank You!



Additional Resources

- EEOC (Equal Employment Opportunity Commission)
 - 1 Congress Street, Boston, MA 02114
 - 617-565-3200 (Voice/TDD)
- SHRM (Society for Human Resource Management)
 - https://www.shrm.org/ResourcesAndTools/hr-topics/employee-relations/Pages/Workplace-Harassment-Resources.aspx?gclid=Cj0KCQiA38jRBRCQARIsACEqIev0GxYc-D0heYqMeMmT3ZDNQmbTwwqMZxks8OpugWAdybvxxvNmW5slMaAg8HEALw_wcB
- Vermont Human Rights Commission
 - 14-16 Baldwin Street, Montpelier, VT 05633-6301
 - 802-828-2480 (Voice); 877-294-9200 (TTY)
 - Human.rights@vermont.gov
- Vermont State Employee's Association, Inc.
 - 155 State Street, Montpelier, VT 05601
 - 802-223-5247

Images

- Stop Sexual Harassment
- https://www.google.com/search?q=sexual+harassment&source=lnms&tbm=isch&sa=X&ved=0ahUKEwja64O9iN_XAhXokeAKHTuEDc0Q_AUIDCgD&biw=1590&bih=751#imgrc=CZoWkTb9x_HvBM:
- Common Courtesies
- https://www.google.com/search?biw=1590&bih=702&tbm=isch&sa=1&ei=7jQcWvXzMM2i_QaG6q_wBg&q=common+courtesies&oq=common+courtesies&gs_l=psy-ab.3..0j0i30k1j0i24k1l5.2254232.2257341.0.2257896.19.14.1.4.5.0.133.908.8j3.11.0....0...1c.1.64.psy-ab..3.16.938...0i67k1j0i10i67k1j0i13k1.0.VhleVZCy-Rk#imgrc=Nt0begcxHnw16M:
- Coworker touch image
- https://www.google.com/search?biw=1920&bih=1045&tbm=isch&sa=1&ei=CI38WeG0L8jLmwH__ZugCA&q=sexual+harassment&oq=sexual+haras&gs_l=psy-ab.3.0.0l10.53982.55552.0.56919.12.9.0.0.0.340.1105.2-3j1.4.0....0...1.1.64.psy-ab..8.4.1105...0i67k1.0.QZweFQN1ZnI#imgrc=AOeZYN8_r8TofM:

Images

- Woman Work Forest
- https://www.google.com/search?biw=1920&bih=1045&tbm=isch&sa=1&ei=3bAuWv2yOayMjwTY0I-wCg&q=forestry+women+&oq=forestry+women+&gs_l=psy-ab.3..0i8i30k1.178015.178577.0.179410.4.4.0.0.0.139.272.0j2.2.0....0...1c.1.64.psy-ab..2.1.139....0.6fVQ5_zmgps#imgrc=_lAaf1svzwhxCM:
- Break Time
- <https://crewapp.com/c/wp-content/uploads/2017/09/take-a-break-in-10h-schedule.jpg>
- Your Role
- https://www.google.com/search?q=your+role&source=lnms&tbm=isch&sa=X&ved=0ahUKEwiTibTD_bHXAhWDSSYKHe89CM0Q_AUICigB&biw=1920&bih=1094#imgrc=oDE0J2N8lCViTM:
- Communication in Workplace
- https://www.google.com/search?q=healthy+communication+workplace&source=lnms&tbm=isch&sa=X&ved=0ahUKEwj_seSd6qzXAhVk5YMKHRxFADAQ_AUICigB&biw=1920&bih=1094#imgrc=TfxI4uGDuaJcPM:
- Thank You
- https://www.google.com/search?q=happy+workplace&source=lnms&tbm=isch&sa=X&ved=0ahUKEwj3w-P2zd_XAhXkm-AKHYYXGCwIQ_AUICigB&biw=1590&bih=751#imgrc=aTc8qRx_GfhRGM: