

Sexual Harassment Information Sheet

What Is Sexual Harassment?

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature can all constitute sexual harassment 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.

Sexual harassment violates an individual's basic civil rights, undermines the integrity of the workplace, and adversely affects workers and clients whether or not they are direct subjects of harassment. 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, as well as the collective bargaining agreements between the State of Vermont and the Vermont State Employees' Association, Inc. It is also unlawful to retaliate against an employee for filing a complaint of sexual harassment or for cooperating in an investigation of sexual harassment.

Examples of Sexually Harassing Behaviors

The behaviors listed below are examples of some of the behaviors that can constitute sexual harassment. Sexual harassment occurs if the behavior is sexual and unwanted, if an individual's employment position is dependent on submitting to or accepting the behavior, or if it contributes to an offensive, hostile, or uncomfortable work environment.

These behaviors are unacceptable, and should not be present in any work environment, no matter how formal or informal, or whether it is an on-site or off-site work environment:

- Sexual jokes, innuendos, and gestures;
- Unsolicited and unwelcome flirtations, advances of propositions, however subtle;
- Graphic or degrading comments about someone's appearance, dress, or body;
- Staring at an individual or focusing upon a particular area of the body;
- "Elevator eyes" ... looking someone up and down;
- Whistling, cat calls, leering;
- Terms of address such as "honey", "baby", "chick," "hunk", or "dear";

- Regularly offering personal gifts such as flowers, candy, etc.;
- Display of sexually suggestive objects or pictures;
- Sexual or intrusive questions about an individual's personal life;
- Explicit descriptions of the harasser's own sexual experiences;
- Neck or shoulder massages;
- Pressure (however subtle) for sexual activity;
- Explicit offers of sex for grades, money, or other rewards;
- Any unnecessary, unwanted physical contact such as touching, rubbing, hugging, pinching, patting, or kissing;
- Physical or sexual assault, including rape

Facts About Sexual Harassment

Sexual harassment can occur in a variety of circumstances, which include but are not limited to the following:

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
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An Employee's Role in the Prevention of Sexual Harassment in the Workplace

All State of Vermont employees are expected to follow the State of Vermont sexual harassment policy, as well as any agency or department policy. Compliance with the law and policies includes not retaliating against any employee or person who complains about sexual harassment, whether the complaint is formal or informal. In addition, employees are encouraged to report acts of sexual harassment, even where they consider themselves only witnesses and not victims of the harassing behavior. In addition, for any employee that is a victim of sexual harassment, the following guidance is offered:

- Tell the person firmly that you find their behavior objectionable.
- Tell your supervisor. If your supervisor is the harasser, don't fear losing your job, tell his/her manager or any departmental manager, personnel officer, Equal Employment Opportunity (EEO) officer, or a representative of the Department of Human Resources.
- Consult and/or file a complaint of sexual harassment with VSEA.

- Keep a detailed log of the offensive behavior.

Supervisors' / Managers' Role in the Prevention of Sexual Harassment in the Workplace

Stated generally, the role of a supervisor or manager is to provide and maintain a work place free from sexual harassment. In order to meet that goal, supervisors and managers should:

- Notify all subordinates of the sexual harassment policy;
- Prevent retaliation against employees who file a complaint of sexual harassment;
- Ensure that employees know they are not required to endure sexual harassment; that sexual harassment will not be allowed; that the State's Sexual Harassment Policy will be enforced; and that charges of sexual harassment will be impartially and immediately investigated;
- Ensure that employees are provided gender-relations training;
- Post the State's Sexual Harassment Policy and a poster that announces the Policy in prominent and accessible locations in the work place.
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Managers or supervisors who do not deal with sexual harassment complaints consistent with the terms of State of Vermont and/or Department policies may be subject to disciplinary action.

Prevention Methods

The victims of sexual harassment should not be held responsible for the misbehavior of those who harass them, however, victims can deter harassment and/or help their employer effectively respond to complaints if they:

- Conduct themselves in a business-like manner.
- Dress appropriately for the job.
- Become familiar with their right to work in an environment free from discrimination based on sex.
- Become acquainted with their organization's policy and procedures for reporting harassment.
- Determine ahead of time, what kind of action they would take if harassed.

Agency/Department Liability

Employers are always potentially liable for manager/supervisor's sexual misconduct toward an employee. An employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a manager or supervisor with immediate (or successively higher) authority over the employee.

When no tangible employment action is taken, a defending employer may raise an affirmative defense to liability or damages, subject to proof by a preponderance of the evidence. To succeed in such a defense, employers would have to show they exercised reasonable care to prevent or correct promptly any sexually harassing behavior and that the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise. For that reason, it is especially important that supervisors and managers are aware of their responsibilities and work to meet those responsibilities.

Individual Liability

Individuals who commit sexual harassment may face more than just employment-based discipline. They may also face a lawsuit for damages, with the cost and burden of defending such a suit, as well as the potential for a judgment against them. In addition, certain types of sexual harassment may rise to the level of criminal conduct, which could be the subject of prosecution.

Non-Employee Harassment

Sexual harassment can also come from outside of the organization. Section 1604.11, Paragraph (e) of the federal guidelines establishes the right of employees to be protected from harassment by non-employees. Employers may be held responsible for acts of sexual harassment perpetrated by non-employees who are conducting business in the employee's work environment if the employer is aware of the harassment and does not take measures to correct the conduct.