

**Sexual Harassment and
Discrimination
Awareness & Prevention Training**

November 2, 2021

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What is Sexual Harassment?

Sexual harassment is:

- unwelcome sexual advances
- requests for sexual favors, or
- any conduct of a sexual nature

that affects an employee's terms or conditions of employment.

When does harassment affect the terms and conditions of someone's employment?

- When submission to such conduct is made either **explicitly or implicitly a term or condition** of an individual's employment,
- Submission to or rejection of such conduct by an individual is used **as the basis for employment decisions** affecting such individual, or
- Such conduct has the purpose or effect of **substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.**

Who can be the Perpetrator?

- Management
- Co-workers
- Vendors
- Independent Contractors
- Consultants



Who can be the Victim?

- The **employee** to whom the conduct is directed.
- Other employees who witness or overhear and are impacted/offended (**bystander**), though not the target of the conduct.

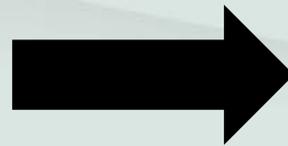
Types of Unlawful Sexual Harassment

- 1. Quid Pro Quo Sexual Harassment.** *“You do something for me, and I’ll do something for you.”*
- 2. Hostile Work Environment Sexual Harassment.** *“The air at work is full of sexual references and it is impacting me.”*

Quid Pro Quo

This

- Sex
- Other sexual contact
- Dates
- Flirting
- Putting up with sexual comments/touching



That

- Promotion
- Positive Review
- Keeping job
- Pay increase
- Bonus
- More favorable assignments, office, etc.

Hypothetical #1

Brittany has been working for several years at a University as a professor's assistant and has been receiving promotions with no trouble. Her new boss asks her to stay late at work and "discusses" her upcoming promotion and puts his arms around her. He asks her to bring assignments to grade to his apartment over the weekend. Brittany declines her boss's request and when she comes up for promotion, she receives the promotion.

- Is this *quid pro quo* sexual harassment?
- What if she was denied the promotion?
- What if it was a co-worker with no influence over Brittany's job?

Hypothetical #2

A supervisor conducts regular sales team meetings at a strip club. When a female employee objects to attending these meetings, she is threatened with discipline for insubordination.

- Does the female employee have a claim for *quid pro quo* sexual harassment?
- What if the meetings occurred after hours?
- What if the meetings were mandatory?
- Would you come to the same conclusion if the employee making the complaint was a male?

Unwelcome Behavior

- Sexual conduct becomes sexual harassment when the behavior is unwelcome.
- Welcome behavior can quickly become unwelcome behavior.
- Also, consent can be revoked at any time. When someone experiencing sexual harassment behavior says, "stop talking to me like this," **it must stop.**

Unwelcome Conduct Example #1

A female assistant is told by her boss that she will receive a salary increase if she goes along with his demands for sexual favors. She voluntarily consents to have sexual intercourse.

Is this unwelcome conduct since she voluntarily consented to go along with it?

Unwelcome Conduct

Example #2

- Jill's supervisor Jack has asked Jill out three times.
 - The first time: She told him she would, but she has other plans
 - Second time: she told him that she can't because she has to give her dog a bath that night
 - Jack asks her out still another time, and Jill says no, and that she is not interested and wants him to stop.

Hostile Work Environment

- Conduct generally does not usually create a hostile work environment if it is only occasional, isolated, or trivial (unless extremely serious).
- Petty slights, annoyances (unless extremely serious) will not rise to the level of illegality.
- To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to **reasonable people**.



Reasonable Person Example

- Employee alleges that her coworker made repeated unwelcome sexual advances toward her.
- An investigation discloses that the alleged “advances” consisted of invitations to join a group of employees who regularly socialize at dinner after work.
- The coworker’s invitations, viewed in that context and from the perspective of a reasonable person, would not have created a hostile environment and therefore would not constitute sexual harassment.

Gender Identity and Sexual Orientation

- All persons can be victims of sexual harassment regardless of the victim's **gender identity** or the perpetrator's gender identity.
- All persons can be victims of sexual harassment regardless of the victim's **sexual orientation** or the perpetrator's sexual orientation.



Definitions

– **Sexual Orientation:**

- a person's sexual identity in relation to the gender to which they are attracted; the fact of being heterosexual, homosexual, or bisexual

– **Gender Identity:**

- a person's internal understanding of their gender;
- the perception of a person's gender identity, which may include male, female, a combination of male and female, neither male nor female;
- a gender different from the person's sex assigned at birth; or
- transgender.

Definitions Cont'd.

- **Transgender:**
 - a general term that refers to a person whose gender identity differs from the person's sex assigned at birth.
- **Transitioning:**
 - A process some transgender people go through to begin living as the gender with which they identify, rather than the sex assigned to them at birth.
 - May include changes in name and pronoun usage, facility usage, participation in employer-sponsored activities (such as sports teams, team-building projects, or volunteering), undergoing hormone therapy, surgeries, or medical procedures.

Examples of Sexual Harassment

- Physical conduct
- Verbal conduct
- Visual conduct
- Written conduct



Physical Conduct

- Examples of **physical conduct** that may constitute harassment include:
 - Assault, in the most extreme form.
 - Unwelcome touching.
 - Impeding or blocking movements.
 - Any physical interference with normal work or movement.
 - Sexual gestures.
 - Coercing another person to participate in sexual intercourse or other sexual behaviors.



Verbal Conduct

- Examples of **verbal conduct** that may constitute harassment include:
- Obscene language.
 - Making derogatory comments.
 - Slurs or discussions about sexual activities or behaviors.
 - Comments about another person's physical attributes.
 - Spreading rumors about another person's sexual activities, conduct, or partners.
 - Jokes, including those about gender-specific traits.
 - Sexual advances.
 - Sexual innuendos.
 - Sexually-suggestive names or descriptions (baby, honey, doll).



Visual Conduct

- Examples of **visual conduct** that may constitute harassment include:
 - Leering, such as slowly looking someone up and down.
 - Making sexual gestures.
 - Displaying sexually suggestive or explicit objects, pictures, cartoons, or posters.
 - Computer games depicting sexual situations or behaviors.

Written Conduct

- Examples of **written** (including online) conduct include suggestive, obscene, or propositioning communications (e.g. flirting, requests for dates or sex) in the form of:
 - Letters, notes, greeting cards, or invitations
 - Emails or texts
 - Internet postings or online comments
 - Blog posts
 - Social media (Facebook, Twitter, LinkedIn, Instagram, YouTube, Snapchat)
 - Cyberstalking



Sexual Harassment Outside of the Traditional Working Environment

- An employee's "**working environment**" is not limited to the physical location where the employee is assigned. The "**working environment**" **extends to other worksites** including off-site, mobile or moving worksites/locations.
- For example, a "working environment" includes the courthouse for a lawyer, or an off-site event for a caterer.



Sexual Harassment Outside of the Working Environment

- Our conduct online and through social media can constitute sexual harassment even when it occurs “off the clock,” “off-site,” or even “out of state.”
- Online sexual harassment includes using e-mail, cell phone texts, internet posting, online comments, blog posts, and social media (such as Facebook, Twitter, LinkedIn, Instagram, YouTube, and Snapchat) to send communications of a sexual nature. Examples include:
 - Flirting and requests or demands to go on a date or have sex
 - Sending inappropriate pictures or videos including sexually graphic material
 - Using sexual language or comments including sexually offensive language
 - Cyber stalking



Prohibited Harassment Based on Gender Identity or Sexual Orientation

- Supervisors or co-workers refusing to use the name or gender pronoun that corresponds to the gender identity with which an employee identifies.
- Refusing to allow a transgender individual to wear the clothing associated with the gender the individual identifies with.
- Expressing hostility to transgender or gender-nonconforming individuals because they do not look or act like the employer thinks a man or woman should act.
- Using slurs or other derogatory terms to refer to an employee who is homosexual or perceived to be homosexual.

Harassment or Not?

Jim is the supervisor of four employees: two males and two females. Jim constantly yells at all of his employees and publicly insults their work performance and calls them “lazy.” Tina, a female employee, feels Jim is harassing her because she is a female.

Are Jim’s actions harassment?

- A. No
- B. Yes
- C. It depends



Harassment or Not?

Jim has worked for a technology company for 10 years. He learned that his longtime friend Sara was looking for a job and recommends her for an opening at his company. Six months into the job, it is discovered that Jim sent Sara a dirty joke on a messenger program from his work computer. Sara never complained.

- Can Jim be disciplined for this as inappropriate sexual harassment?
- What if he sent the message during off hours?
- What if instead the text message was sent from Jim's private cell phone to Sara's private cell phone?

Harassment or Not?

Dave teases his coworker, Steve, about being gay based on the way he talks and his tight-fitting clothing. Steve is not gay; he's heterosexual.

Are Dave's actions sexual harassment?

- A. Yes
- B. No, because Dave is teasing another male
- C. No, because Dave's comments have nothing to do with sex

What can I do if I experience, witness, or become aware of unwelcome sexual conduct?

If you experience, witness or become aware of unwelcome sexual conduct, know that:

1. You have the **right to tell the person to stop**. The initiating and participating persons must stop the unwelcome behavior upon request. If they continue the behavior or retaliate against you because you asked them to stop, they can be found to have violated the law by engaging in sexual harassment or retaliation.

2. You have the **right to report the sexual harassment**. Several reporting options are available. The option you choose may depend on the nature and severity of the unwelcome conduct of a sexual nature. Persons who report sexual harassment or participate in investigations are protected from retaliation.

Fontbonne University Expressly Prohibits Harassment

- *Harassment based on an individual's race, color, religion, age, sex, gender identity, sexual orientation, national origin, disability, genetic information, or any other characteristic protected by applicable law is not tolerated at Fontbonne University.*

Fontbonne University's Complaint Procedures

- If an employee feels he/she has been subjected to any form of harassment or discrimination, the employee should:
 - firmly and clearly tell the person engaging in the harassing and/or discriminating conduct that it is unwelcome, offensive, and should stop at once.
 - immediately report the situation to his or her the Title IX coordinator.

Fontbonne University does not require reporting harassment to any supervisor or manager who may be creating the harassment.



Fontbonne University will investigate all complaints of harassment

Upon receiving a complaint of harassment, Fontbonne University will:

- Investigate
- Maintain Confidentiality
- Reach a timely resolution
- Take appropriate corrective action

Avoid Harassment Accusations

- **Use common sense**

- Think before you speak and act
- View the situation from the other person's perspective
- Spouse/Parent/Child test



- **Assume everything is public information**

- Cell phone, text messages and e-mails
- Social media (Twitter, Instagram, Facebook, etc.)
- Prevalence of video cameras

Retaliation

What is retaliation?

- An adverse action taken against an employee that:
 - Complained of harassment or discrimination (e.g. internally or filing a Charge of Discrimination)
 - Testified or assisted in any proceeding (e.g. trial or fact-finding conference)
- Examples of adverse actions:
 - Ignoring that person or isolating that person
 - Job change that may have less responsibility
 - Suddenly negative performance evaluation
 - Lost employment opportunity
 - Suspend/discipline/terminate



Fontbonne University Expressly Prohibits Retaliation



Fontbonne University prohibits retaliation against any person who makes a complaint of discrimination or harassment, opposes discrimination or harassment, or testifies, assists or participates in an investigation proceeding or hearing relating to such discrimination or harassment. Retaliation includes, but is not limited to, any form of intimidation, reprisal, harassment or treatment based upon retaliatory motive that is reasonably likely to deter protected activity.

What is Discrimination?

- Prejudicial or different treatment in making an employment decision (e.g. hiring, disciplining, firing) based on a prohibited category or characteristic.
- Failing to reasonably accommodate an employee's or applicant's disability or religious belief.

What are the protected characteristics?

- Two sets of laws to be aware of:
 - Federal law
 - Missouri law
 - Missouri Human Rights Act



Federal Employment Laws

- **Title VII of the Civil Rights Act of 1964**
 - Race, Color, National Origin, Religion, and Sex (including pregnancy, sexual orientation and gender identity)
- **Americans with Disabilities Act (ADA)**
 - Disability



Federal Employment Laws

- **Age Discrimination in Employment Act (ADEA)**
 - Age
- **Section 1981 of the Civil Rights Act of 1866 (Section 1981)**
 - Race, Color, Ancestry and Ethnic Characteristics
- **Genetic Information Nondiscrimination Act (GINA)**
 - Genetic Information

Federal Employment Laws

- **Equal Protection Act (EPA)**
 - Sex
- **Uniformed Services Employment and Reemployment Rights Act (USERRA)**
 - Military service
- **Immigration Reform and Control Act (IRCA)**
 - Citizenship and National Origin

Missouri Human Rights Act

- Missouri Human Rights Act
 - Prohibits discrimination in employment based on race, color, religion, national origin, ancestry, sex, disability and age.

Fontbonne University Prohibits Discrimination

- Fontbonne University does not discriminate on the basis of race, color, religion, age, sex, gender identity, sexual orientation, national origin, disability, genetic information, or any other characteristic protected by applicable law in employment or in the administration of its educational policies, admission policies, educational programs, scholarship and loan programs, or athletic and other programs and activities. Furthermore, Fontbonne University prohibits retaliation against anyone who either opposes unlawful discrimination, assists or participates in an investigation of a complaint of discrimination, or exercises that person's rights under any law that forbids discrimination.

What about Bullying?

- Workplace bullying occurs when one or more employees single out another employee for repeated, disruptive, embarrassing or intimidating mistreatment.
- Bullies often target employees who are different than they are.
- Bullying can include: spreading rumors, excluding an employee, undermining an employee's work, intentionally giving incorrect information to the employee, embarrassing or humiliating the employee.

Conduct that is not discrimination or harassment

- Requiring employees to successfully perform their job duties
- Giving employees honest and fair job evaluations and performance reviews
- Disciplining employees for violations of policies, rules of conduct or attendance issues



Post-Attendee Quiz

- True or False?

- A man can be a victim of sexual harassment
 - **TRUE**
- An individual can be found liable of sexual harassment even if he/she didn't intend to harass anyone
 - **TRUE**
- Sexual harassment violates both federal and state laws
 - **TRUE**
- The harasser must be an employee of the company for the conduct to be considered unlawful harassment
 - **FALSE**
- If an employee asks for his/her complaint to be kept confidential, the supervisor should honor that request
 - **FALSE**

Post-Attendee Quiz

- Sexual banter or teasing between two willing co-workers is not harassment
 - **FALSE**
- Sexual harassment can only occur in the actual workplace
 - **FALSE**
- Refusing to address transgender employees by their preferred pronouns/names, while disrespectful, is not unlawful because it's a matter of opinion
 - **FALSE**

Questions?