

Sexual Harassment in the Workplace



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Sexual harassment in the workplace is a problem that must be taken seriously. It can significantly reduce productivity, increase employee absenteeism and turnover, and impair the health and well-being of employees. Sexual harassment is not about sex; rather, it is the harasser expressing hostility toward the victim or abusing power over the victim because of the victim's gender. Most incidents of sexual harassment involve a male harasser and a female victim, though males may be the victims of female harassers and same sex harassment can occur.

How Much Time Do I Have To File A Lawsuit If The Facts Of My Case Support A Legal Claim For Discrimination?

Sexual harassment in employment is illegal under federal and state statutes prohibiting employment discrimination. It is also illegal under some city ordinances (e.g. in Seattle, Spokane, and Tacoma). Following is a brief summary of the federal and state laws against discrimination.

Federal Law

Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment on the basis of sex, race and other grounds. Sexual harassment is considered sex discrimination. Title VII is enforced by the U. S. Equal Employment Opportunity Commission (EEOC). The law applies to employers with 15 or more employees, employment agencies, and most unions.

To use Title VII, the victim must first file a complaint with the EEOC. In Washington, a complaint must be filed within 300 days of the most recent act of discrimination. (The standard 180-day deadline is extended to 300 days in Washington State because sexual harassment is also covered under state law). During or after investigation, the EEOC may try to help the parties reach a voluntary settlement. If it finds illegal sexual harassment, it can also bring a lawsuit on behalf of the complainant. More commonly, it will issue a "right-to-sue" notice which allows the complainant to file a private lawsuit in court.

State Law

The Washington State Law Against Discrimination (RCW 49.60) also prohibits sex discrimination in employment, which includes sexual harassment. Under this law, individuals may file a lawsuit in state court or file a complaint with the Washington State Human Rights Commission.

To use the Human Rights Commission, a complaint must be filed within 180 days of the most recent act of discrimination and the employer must have at least 8 employees. The agency will investigate the case and if it finds the complaint valid, it can hold a hearing and take appropriate action against the employer.

In Washington, individuals also may file a lawsuit under the Washington State Law Against Discrimination (RCW 49.60) in state court without first filing a complaint with the Human Rights Commission. The suit must be filed within 3 years of the most recent act of discrimination. This time limitation varies from state to state. In Washington, where you can demonstrate a continuing pattern of discrimination, you may be able to recover damages even for incidents older than three years provided that you file suit no later than three years from the date of the most recent discriminatory act.

If you think you have a claim based on the information set forth below, you should not delay in consulting an attorney. You should contact an attorney well before the deadline, so she or he has time to evaluate your claim. You must file your claim within the time allowed, or your suit will be barred.

What is Sexual Harassment?

There are two forms of sexual harassment in employment which are illegal. These are known as “hostile work environment” claims and “quid pro quo claims.”

Hostile work environment sexual harassment results when either:

You are the target of unwelcome sexually suggestive or demeaning comments, repeated and unwelcome requests for dates, offensive gestures, offensive touching, jokes or pranks, intimidating behaviors, or pornographic materials that are: 1) directed to you because of your gender status (the very fact that you are a female or a male, 2) the offenses are severe or pervasive, 3) the conditions of your employment are affected, and 4) your employer is directly or indirectly responsible for the harassment. This includes offensive conduct directed to you by your employer’s customers or vendors. OR,

Your employer provides less favorable terms and conditions of employment to you than to your opposite sex co-workers simply because of your gender status (hiring procedures, hours, wages, promotions, work schedules, work assignments, vacation or sick leave benefits, job evaluation discipline, termination, etc.).

Quid pro quo sexual harassment results when:

Sexual favors are asked for or demanded of you by a supervisor or higher-level manager in exchange for employment benefits.

Sexual relations can be voluntary without being welcome. Sex that is coerced because you fear you will lose your job or be punished at work if you don't cooperate or because you are afraid or embarrassed can be a form of illegal harassment. Your gender status doesn't have to be the only reason you were singled out for this unfair treatment, but it must be at least a substantial factor.

What Claims Will Not Be Recognized Under (Sexual Harassment) Discrimination Laws?

- Casual, isolated (unless extremely serious and outrageous) or trivial incidents;
- Conduct that you in fact invited or made others believe was welcomed by you;
- Conduct that was directed equally toward both male and female employees;
- Conduct by a co-worker (this refers to someone who is not an owner, manager or supervisor). You may have a direct claim on other grounds against a non-management co-worker; and
- Under state law, where the employer is a religious organization.

Who May Be Liable For Sexual Harassment Discrimination?

- The employer, if an employer-owner, manager, partner or corporate officer or supervisor (having actual authority over you) directly participated in the harassment.
- The employer, if the employer knew or should have known of the harassment and failed to take prompt and effective action to eliminate the problem.
- Under state law, individual supervisors or managers where their own actions are directly discriminatory.
- Under some circumstances, a union or its agents.
- An employment agency.

Washington state employment discrimination law applies to an employer with eight or more employees.

Note: If the employer has fewer than eight employees, you may still have a claim provided you were terminated from your job at least in part because the employer engaged in sexual harassment discrimination or in other ways violated public policy by firing you.

Federal employment discrimination law requires that an employer have at least fifteen employees.

Note: This limitation won't apply if you have additional claims based on race or national origin discrimination which qualify you for special protection under federal civil rights law 42 USC § 1981.

What Defenses Are Available To My Employer?

Your employer will not be liable where: the employer (or persons highly ranked in management or closely connected with your employer), 1) have established adequate discrimination-

prevention policies and procedures, 2) did not know of, or could not have known of the harassment, 3) took reasonably prompt and adequate corrective steps to prevent further harassment as soon as the complaint came to light and/or 4) you unreasonably failed to take advantage of the preventive or corrective protections available through your employer.

This defense will not be available to your employer, however, where a supervisor or manager's harassment resulted in a tangible employment action against you, such as discharge, demotion or undesirable reassignment.

Your employer will not be liable where: 1) a legitimate business purpose exists to explain any unequal treatment you experienced and, 2) you fail to show that the explanation offered is just a pretext to cover up actual discrimination.

What Are My Employer's Responsibilities In Relation To Sexual Harassment?

Your employer must provide training to educate all employees, managers and agents to understand what type of conduct is viewed as sexual harassment and how the employer will vigorously respond to complaints about such conduct.

Your employer must develop policies and rules to prevent sexual harassment and monitor and enforce those policies and procedures. It is not enough to have policies and procedures in place. They must be disseminated and enforced effectively.

Your employer must provide procedures so that employees who are victims of sexual harassment can report their complaints. The procedures must establish a clearly marked, accessible and adequate channel for reporting complaints.

Your employer must thoroughly and promptly investigate complaints of sexual harassment and must take prompt and effective action to eliminate further sexual harassment in the workplace.

What Are My Responsibilities In Relation To Sexual Harassment Discrimination?

Where it is safe to do so, make it clear to the harasser that the offensive behavior is in fact unwelcome.

Report your complaints of serious, on-going harassment to management and ask that steps be taken to eliminate such abuse. Make your complaint known to a person with decision-making authority. If your employer has established anti-discrimination procedures, follow them. You are encouraged to make your complaints in writing and, where possible, have a trusted witness present when you make your complaint. Try to get some evidence that the employer actually received your complaint and the date and time the complaint was made. Keep a copy of the complaint you submit. In most cases, the law requires that before an employer can be liable

under discrimination laws, the employer must be given notice of the harassment and must have a reasonable opportunity to investigate and take effective action to correct the situation.

Cooperate in the employer's investigation of your complaint and take advantage of any preventive or corrective opportunities provided by the employer.

Avoid engaging in activities that appear to invite offensive conduct.

You can report the discrimination to the Washington Human Rights Commission (within 180 days of the most recent act of discrimination), or

You can report the discrimination to the U.S. Equal Employment Opportunity Commission (EEOC) within 300 days. (The 180-day deadline for filing a claim is extended to 300 days in Washington State). If you intend to later sue under federal civil rights law, Title VII, you must first take this step.

What Damages Am I Entitled To Recover Under Laws Protecting Me From Sexual Harassment Discrimination?

If you are successful in negotiating a settlement or recovering a trial award, you may be entitled to recover related out-of-pocket expenses, damages for mental anguish and emotional distress, medical expenses, lost wages (both past and future), job reinstatement, restoration of job benefits, promotion, litigation costs and attorney fees. Under some circumstances you might recover punitive damages.

What Other Legal Claims Might Apply To Cases Of Employment Discrimination?

In some circumstances, you may also bring a claim against our employer for *breach of written contract*, which could include a union bargaining agreement or, in some limited circumstances, a written employee handbook.

If your employer takes an adverse action against you because you make a claim for sexual harassment, you can also bring a claim for *retaliation*. To prove a retaliation claim, you will have to prove that, at least in substantial part, your complaint of sexual harassment/discrimination resulted in an adverse employment action being taken against you. An adverse employment action can include: decreased job responsibilities, transfer of favorable work assignments or preferred customers away from you, exclusion from staff meetings, assignment to a less favorable office environment, reassignment which requires longer commute, hostility by co-workers, denial of access to necessary work information, downgrading job status or performance evaluations, denial of job promotion, denial of overtime hours or full work week, assignment to undesirable work schedule, frequent staff or shift changes, refusal to assign meaningful work, unwarranted and unsubstantiated letters of reprimand or discipline, reduction in pay, suspension, or termination).

In some circumstances, you may also bring a claim for *outrage*, negligent and intentional infliction of emotional distress.

Depending on the facts giving rise to the sexual harassment, you may also be able to bring a claim of *assault and battery*.

You may also be able to make claims for *discrimination* based on race, national origin, disability, religion, age or pregnancy status or based on your participation in union activities. (See the Legal Voice memo "*Employment Discrimination*.")

Finally, you may also have claims under *equal pay* statutes, *minimum wage* laws, *fair labor standards* laws, *Family Medical Leave*, and/or *whistle blower* protections.

Common Sense Guidelines For Individuals Considering Bringing A Sexual Harassment Claim

1. If it will not jeopardize your job or safety, make it clear to the harasser that the offensive behavior is in fact unwelcome.
2. Report your complaints of ongoing harassment to management and ask that steps be taken to eliminate such abuse. Make your complaint known to a person with decision-making authority. If your employer has established anti-discrimination procedures, follow them. Be aware that your complaint will probably not be kept confidential. You are encouraged to make your complaints in writing and, where possible, have a trusted witness present when you make your complaint. Try to get some evidence that the employer actually received your complaint and the date and time the complaint was made. Keep a copy of the complaint you submit.
3. If you are represented by a union, report the discrimination to your union and ask that they investigate and take appropriate action on your behalf.
4. Establish a record of solid job performance. A history of excessive absenteeism, tardiness, sloppy work performance, acts of violence or threats of violence, theft or use of drugs or alcohol on the job or coming to work "under the influence" may make it difficult, if not impossible, to pursue your claim.
5. Keep a written log of dates, times and witnesses, and events you believe are significant to your potential claim. Make those notes during breaks or after work. Do not set yourself up for the charge that you were doing personal business on company time.
6. Only make or keep copies of documents where you have your employer's authorization to do so. Obtaining records and information where you do not have such permission can get you fired and can defeat or limit your claim.

7. When you are making notes of what has happened: limit your notes to the facts (who, what, when, where); be accurate; don't guess about the facts; don't exaggerate; don't misrepresent what really happened. Make notes of your physical and emotional responses to the harassment (loss of appetite, inability to sleep, weight loss or gain, depression, fear, etc.).

8. If you discuss your situation with sympathetic co-workers, have those conversations off the work premises and not on company time. Confide only in people you know for certain you can trust.

9. If you have a written job description, keep a copy of that document in your personal records.

10. If you are given a written job evaluation, ask for a copy and keep it. Good job evaluations are very helpful in overcoming a defendant employer's claim that you were disciplined or terminated because the quality of your work or your work habits didn't measure up to the company's standards.

11. If you are given a written disciplinary warning or notice, do not sign it without carefully reading it and understanding what it says. If you don't understand it, ask questions. Ask for permission to have a witness present at any disciplinary meeting. If you disagree with the content of the notice, ask to have your written statement setting out your view of the facts made a part of your employment file. Keep a copy of your statement. You have a right to inspect your personnel file to ensure your statement was made part of your file.

12. If you are fired, you are entitled to a written statement explaining the basis for your termination.

13. If you consult with an attorney, make the best use of the time available with the attorney by organizing your information neatly and in order by dates of the incidents. Prepare a brief, clear summary of the highlights of your claim. If you make this effort, you enhance the chance the attorney or legal staff will take greater interest in your case.

14. Before you hire an attorney, make sure you understand how the lawyer is going to be paid and the rate of pay. You also need to understand what costs you will be charged in addition to the attorney fee. (*See the Legal Voice memo "Working with a Lawyer."*)

15. Be prepared for the fact that when you make a claim for emotional distress, which will be a significant part of your claim, you can expect the defendant will be entitled to access what would otherwise be private and confidential information about you. Records and information related to your health care, education, employment, family life and any possible criminal history will be open to inspection by your employer's attorney.

You can get more information on the law from:

The Legal Voice memo "Employment Discrimination." This memo also includes contact information for government agencies.

These websites: <http://www.workplacefairness.org/>
<http://www.9to5.org/>
<http://www.equalrights.org/>
<http://www.eeoc.gov/>
<http://www.dol.gov/wb/>
<http://findlaw.com/#>