

CHAPTER 1

What to Do if You Believe You Have Been Sexually Harassed: Resources for Individuals

INTRODUCTION

We have written this resource manual primarily for human resource personnel and school/college administrators who want to deal effectively with sexual harassment through the development of policy statements, investigatory procedures, and training/education programs.

Yet we recognize that individuals may also want to know about sexual harassment because of their own experiences with this form of sexual victimization and/or with being involved in a sexual harassment complaint proceeding. We therefore have written this chapter with the goal of assisting individuals who believe they are being sexually harassed. We offer suggestions for resolving complaints within the school/workplace as well as for obtaining therapeutic support in dealing with sexual harassment.

We hope the resources in this chapter will assist individuals in coping with their own sexual harassment experiences. The materials, in this chapter, can also be useful for friends and family members of sexually harassed individuals as well as for individuals who have been accused of sexual harassment.

We present the following material in a question and

answer format. The questions represent the ones we are asked frequently by individuals who believe they are experiencing sexual harassment.

WHAT IS SEXUAL HARASSMENT?

The Equal Employment Opportunity Commission (EEOC) guidelines (see below) state that sexual harassment is “unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature” when *any one* of the following criteria is met:

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

This definition may be extended to academic institutions as well.

There are two types of sexual harassment situations which are described by this EEOC definition: *quid pro quo* and hostile or discriminatory work environment. The United States Supreme Court has agreed with the agency that both of these situations are violations of the federal law. We will discuss each of these sexual harassment situations separately because they involve different conduct and have their own legal parameters.

Quid pro quo is a legal term which roughly translates to “something for something.” Under the EEOC definition, *quid pro quo* cases involve behavior in which “submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment [or] sub-

mission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.”

Quid pro quo sexual harassment involves an individual with organizational power who expressly or implicitly ties a “term, condition or privilege of employment/education” to the response of an employee/student to unwelcome sexual advances. Thus, failure to receive a promotion, failure to be assigned preferred working hours, threats of being fired, failure to get the grade earned, or retaliatory behavior, such as unjustifiably negative employment evaluations or recommendations all illustrate quid pro quo sexual harassment.

Hostile environment sexual harassment involves a situation where an atmosphere or climate is created in the workplace or school/college that makes it difficult, if not impossible, for an employee/student to work because the atmosphere is perceived by the individual as intimidating, offensive, and hostile.

For sexual harassment to be actionable it must be sufficiently severe or pervasive to alter the conditions of the employee’s employment and create an abusive or hostile working environment. The Supreme Court in 1993 ruled that Title VII (see below) may be violated regardless of whether the individual suffered psychological harm in a hostile working environment (*Harris v. Forklift Systems, Inc.*).

In behavioral terms, sexual harassment consists of the sexualization of an instrumental relationship (e.g., supervisor-employee; professor-student) through the introduction of sexist or sexual remarks, requests, or requirements in the context of a formal power differential. Sexual harassment does not fall within the range of personal private relationships. It happens when a person with power in the school or workplace (e.g., professor, dean, supervisor) abuses that power to intimidate, coerce, or humiliate someone because of their sex. It is a breach of trust that is supposed to exist among members of a school or workplace. Sexual harassment is unwelcome and introduces a sexual element into what should be a professional situation.

Verbal harassment includes:

- a. unwelcome sexual innuendos, comments, and sexual remarks
- b. suggestive, obscene, or insulting sounds
- c. implied or overt threats
- d. pressure for sex

Physical harassment includes:

- a. unwelcome patting, pinching, and brushing up against the body
- b. coerced sexual intercourse
- c. assault
- d. leering or ogling
- e. obscene gestures

ISNT SEXUAL HARASSMENT THE SAME AS FLIRTING?

No! If someone is flirting with you, flattering you, or paying you compliments, you can exercise freedom of choice in deciding whether to establish a close, intimate relationship. This freedom of choice is absent in sexual harassment. In addition, flirting makes the receiver feel good, in control, and attractive. Sexual harassment makes the receiver feel uncomfortable, anxious, threatened. Let's deal with the impact of sexual harassment in more detail.

HOW CAN I EXPECT TO FEEL IF I AM BEING SEXUALLY HARASSED?

Not everyone will respond the same way to being sexually harassed, but research has suggested the following responses that are most commonly experienced by victims of sexual harassment (also see chapters 2, 3, and 4):

Career Effects

- a. Changes in study/work habits
- b. Drop in school/work performance because of stress
- c. Absenteeism
- d. Withdrawal from school/work
- e. Changes in career goals

Emotional Reactions

- a. Shock, denial
- b. Anger, frustration
- c. Insecurity, embarrassment
- d. Confusion, self-consciousness
- e. Shame, powerlessness
- f. Guilt, isolation

Physical Reactions

- a. Headaches
- b. Inability to concentrate
- c. Sleep disturbances
- d. Lethargy
- e. Gastrointestinal distress
- f. Respiratory problems
- g. Phobias, panic reactions
- h. Nightmares
- i. Eating disorders
- j. Dermatological reactions

Changes in Self-Perception

- a. Poor self-concept/self-esteem
- b. Lack of competency
- c. Powerlessness
- d. Isolation

Social, Interpersonal Relatedness, and Sexual Effects

- a. Withdrawal
- b. Fear of new people

- c. Lack of trust
- d. Change in physical appearance
- e. Change in social network patterns
- f. Negative attitudes about sexual relationships

These responses are influenced by disappointment in the way others react to your experiences; the stress of harassment-induced life changes such as moves, loss of income, and disrupted work history. Legal expenses, medical costs, and psychotherapy costs contribute to these responses as well.

We recommend seeking medical attention and psychotherapeutic support (see below). Tell your physician and mental health practitioner about your experiences and perceptions about these experiences.

IS IT COMMON FOR PEOPLE TO CONFRONT THE INDIVIDUAL THEY BELIEVE IS SEXUALLY HARASSING THEM?

Some people feel comfortable in confronting the alleged harasser. Others remain silent for fear of possible retaliation should they speak out about their experiences. This latter response is very common among individuals who work at an organization or attend a school/college that does not have an effective and enforced policy statement prohibiting sexual harassment.

As we discuss throughout this resource manual, researchers classify individuals' responses into two categories: internally focused strategies and externally focused strategies. Internal strategies represent attempts to manage the emotions and thoughts associated with the behaviors individuals have experienced. The following are examples of internally focused strategies.

Detachment. You minimize the situation, treat it as a joke.

Denial. You deny behaviors; attempt to forget about it.

Relabeling. You reappraise situation as less threatening; offer excuses for harasser's behaviors.

Illusory Control. You attempt to take responsibility for harassment.

Endurance. You put up with behavior because you do not believe help is available or you fear retaliation.

Externally focused strategies focus on the harassing situation itself, including reporting the behavior to the individual charged with investigating complaints of sexual harassment. The following are examples of externally focused strategies:

Avoidance. You attempt to avoid the situation by staying away from the harasser.

Assertion / Confrontation. You refuse sexual or social offers or verbally confront the harasser.

Seeking Institutional / Organizational Relief. You report the incident and file a complaint.

Social Support. You seek support of others to validate perceptions of the behaviors.

Appeasement. You attempt to evade the harasser without confrontation; attempt to placate the harasser

You may find yourself identifying with one strategy at the outset of your experiences and, with time, decide another strategy would work better. We recommend discussing your options with a trusted family member and/or friend as well as the organization's or school's representative for handling complaints of sexual harassment. Your school or workplace should have an individual, e.g., sexual harassment advisor or employee assistance program counselor, who can answer questions for you about the complaint procedure prior to you actually filing a complaint.

Research has also suggested that you may feel the following when you are experiencing sexual harassment:

- Confused and/or embarrassed
- Helpless
- Angry and/or insulted
- Worried

Share these concerns with your sexual harassment advisor. You may view yourself as needy, frightened, weak, and out of control. Perhaps you didn't see yourself as a potential victim. Have you asked "Why me?" "I didn't do anything to lead this person on." "I wasn't dressed provocatively." These are common responses from an individual who has experienced sexual harassment.

Women and men who have been sexually harassed typically experience physical and emotional damage. They also suffer negative impact on their career advancement. Many lose jobs or promotions, get low grades in school, change academic programs, or mistrust educational opportunities which they previously found appealing and promising.

Because sexual harassment is still not publicly acknowledged as a major form of abuse, people often respond to sexual harassment with confusion, doubt, self-blame, and a desire to flee the situation rather than report it.

HOW CAN I CONFRONT THE INDIVIDUAL I BELIEVE IS SEXUALLY HARASSING ME?

We will summarize three main strategies for dealing with sexual harassment: individual, institutional, and legal.

Individual Strategy

Affirmative Action Officer, Mary Rowe, at the Massachusetts Institute of Technology, suggests that writing a letter to the perceived harasser frequently stops the harassment. She recommends that the letter consist of three sections:

1. A factual account that indicates what happened.
2. A description of the way the writer feels about the events that occurred.

3. A statement of what the writer wants to happen next.

In table 1.1 we present a sample letter. Rowe also recommends that the letter be delivered in person or by registered or certified mail.

Table 1.1
Writing a Letter to a Perceived Harasser

Factual Account of What Happened

We recommend the letter begin with a factual, non-evaluative description of the events that took place. This section should be as detailed as possible, including dates, places, people present, and a description of the incidents. For example, "On Wednesday, May 24, during your office hours (2–4 P.M.), I came to discuss the grade you put on my term paper (B–). During the course of our discussion you patted my thigh and hugged me twice."

Description of Feelings about Incident

In this section, you need to document your feelings about the events described in the first section. For example, "My stomach turned to knots during my visit with you in your office hours"; "I am afraid to come to a department meeting because I don't want you to ever touch me or look at me the way you did."

What Writer Wants to Happen Next

In this section you need to express what you would like to happen next. For example, "I don't ever want you to touch me or hug me again."

After this letter is completed and sent, it is advisable to:

- Not send copies of this letter to the press or college/workplace administrators.
- Keep at least one copy of the letter.
- Not discuss the letter with the person if you do not want to.

You may also use these recommendations in confronting the individual in person. You may want to rehearse your comments with a friend and/or the sexual harassment advisor. We offer the following suggestions:

Communicate the following:

What you are feeling, for example:

- The behavior that you find offensive.
- That you expect the offensive behavior to stop.
- That you want an apology.
- That you are prepared to file a complaint within the company/school should the offensive behavior continue.

Take along a friend for support. This person should remain quiet during the meeting.

Keep a record of the following:

- What was said by each individual.
- How you felt after the confrontation.
- Whether the individual apologized to you.
- Your friend's perceptions of the exchange.
- How the individual responded to you.

Share this record with the friend who supported you and/or a trusted friend. Keep this record for documentation purposes should you need to file an internal complaint.

Writing a letter to or meeting with the perceived harasser can be a successful individual strategy for the following reasons:

- It helps you gain a sense of control over the situation.
- It breaks a pattern of silence you may have kept out of fear of retaliation and/or disbelief.
- It maintains confidentiality.
- It provides an individual with information about the way their behavior is being interpreted by you.

- It most likely avoids formal charges and a public confrontation.
- It suggests that you are willing to take action to stop the harassment.

Should you choose these options, we recommend you write this letter or rehearse your comments with the advice of an individual who handles sexual harassment advising at your school or workplace.

Institutional Strategies

The following questions need to be addressed when dealing with sexual harassment in schools or the workplace:

Does the institution have a policy dealing with sexual harassment?

It should be available from your human resource office, dean of students, or affirmative action office. The policy should also be printed in employees/student handbooks. Familiarize yourself with this policy statement. Look for the following components (also see chapters 2, 3, and 4) for additional issues regarding policy statements):

- Statement Prohibiting Sexual Harassment.
- Legal Definitions of Sexual Harassment.
- Behavioral Examples of Sexual Harassment.
- Statement of School/Workplace's Responsibility in Resolving Complaints of Sexual Harassment.
- Statement of Students'/Employees' Responsibility in Filing Complaints.
- Statement of Sanctions.
- Statement Concerning Sanctions for Retaliation.
- Statement Concerning False Complaints.
- Identification of Individual(s) Responsible for Hearing Complaints.

Is there an informal procedure to help resolve complaints prior to formal charges?

Copies of investigatory procedures should be available from administrators at the school/workplace. Familiarize yourself with the following components of the investigatory procedures:

- How Confidentiality will be Maintained.
- Role and Responsibility of Witnesses for Either Complainant or Accused.
- Statute of Limitations in Filing Complaint.
- Who will Conduct the Investigation of Your Complaint.
- Educational Qualifications of Investigators.
- Amount of Time to Complete Investigation of Complaint.
- How Closure will be Provided to All Parties.
- Names of Individuals at Your Institution who Can Assist You in Preparing Your Complaint.

We also recommend the following for individuals who believe they are experiencing sexual harassment:

- Keep a diary of all experiences with the person you believe is harassing you, including any witnesses present, precise dates and times, copies of notes, and so forth.
- Recognize that using an institutional strategy can be intimidating—these procedures take time and often involve considerable embarrassment and stress for all parties.
- Inquire as to whether you need outside resources to help you resolve the complaint. If so, ask how you obtain them.

WHAT IF I AM UNHAPPY WITH THE OUTCOME OF THE INVESTIGATION AT MY WORKPLACE?

We recommend that you try to resolve complaints of sexual harassment within the workplace according to the policy statement. But if you are dissatisfied with the out-

come of the internal investigation or have reason to believe you are not receiving fair treatment during the internal investigation, other recourse is available. We discuss one in detail in the following section: The Equal Employment Opportunity Commission. This mode of resolution is for workplace sexual harassment. We will later discuss additional means of resolutions for academic sexual harassment.

Legal Strategies

What is Title VII? Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of sex, race, color, religion, and national origin.

Who is Covered by Title VII? Title VII covers all employers who employ fifteen or more employees. Title VII also covers employees who work in educational institutions.

Who Enforces Title VII? The Equal Employment Opportunity Commission (EEOC) was created by the Civil Rights Act of 1964. It was granted the authority to investigate and conciliate complaints that alleged a violation of the law of employment discrimination.

Has the EEOC Issued any Guidelines for Employers? Yes, In 1980, the EEOC issued interpretive guidelines on sexual harassment under Title VII. These guidelines stated that:

- Title VII prohibits sexual harassment of employees.
- Employers are responsible for the actions of their agents and supervisors.
- Employers are responsible for the actions of all other employees if the employer knew or should have known about the sexual harassment.

What Must Employers Do to Comply with the Guidelines?

The guidelines state that an employer should take all necessary steps to prevent sexual harassment such as:

- *Affirmatively discussing sexual harassment.*
- *Expressing strong disapproval of sexual harassment.*
- *Developing sanctions for individuals who have engaged in sexual harassment.*
- *Informing employees of their right to raise and how to raise the issue of sexual harassment.*
- *Training employees concerning what constitutes sexual harassment.*

*Under the Guidelines, are Employers
Liable for Sexual Harassment?*

Yes. These guidelines hold employers fully responsible for the actions of their employees.

*How Can the EEOC Help Me if I am
Dissatisfied with My Company's Investigation?*

In order to use the protections and benefits of Title VII of the U.S. Civil Rights Act, you must file a claim with the Equal Employment Opportunity Commission (EEOC). Because this statute applies only to companies with fifteen employees or more, you must be sure that your company qualifies. The law states that the required number of employees must be employed "in each of 20 or more calendar weeks in the current or preceding calendar year." So a business with ten people currently employed might still qualify, if five or more additional people worked the required twenty weeks in the current or preceding year.

Title VII measures in weeks not days or months, so if fifteen employees work regularly during a week, even though not every day, the business qualifies under Title VII. Employees who work twenty or more hours a week are definitely counted. If the business regularly employs a number of part-time people, then they *may* be counted (courts have varied in their willingness to count part-time employees). Once it is determined by the EEOC or a court that a company is large enough to be included in the law's provisions, then all employees are covered, no matter how

many hours per week or weeks per year they work.

Sometimes an employee is designated an “independent contractor” by an employer and asked to sign a document to that effect. Courts have held that you must control not just the product of your work but also the process—where and when you work, for example—to be a truly independent contractor. Generally, you are considered an employee under Title VII if you do not have true independent control over this process. For example, if you are hired to make telephone solicitations as an “independent contractor” but are required to make these calls during a specified time at a specified place, you are not a true independent contractor and are thus an employee under Title VII’s terms.

How Do I File a Complaint with the EEOC?

You may file a sexual harassment or sexual discrimination claim at any EEOC office, by yourself or with the assistance of an attorney or other advisor. The claim must be written. You may also file your claim by mail. We advise using certified mail as a guarantee of delivery, especially if you are nearing a filing deadline. There is no charge for filing. Though it is ordinarily advisable to file a claim at the EEOC office nearest you, legally you may file at any office.

We advise filing in person, unless some compelling circumstance—such as the need to maintain anonymity—prevents you. Personal filing insures that your claim has been received. You also establish a personal connection with some of the agency’s staff and can inquire about investigative procedures, filing deadlines, and so forth. And when you file in person, you can use the charge form the EEOC has designed, which may expedite the investigation.

The EEOC allows another person or organization (such as a union, an Employee Assistance Program, a women’s advocacy group) to file the claim on your behalf in order to protect your anonymity. This procedure is designed not only to maintain confidentiality and protect you from retaliation while the investigation proceeds, but also to encourage employees to file complaints promptly.

What is the Time Limit for My Filing My Complaint with the EEOC?

The EEOC has two different time limits (statute of limitations) for filing claims, 180 days and 300 days, dating from the sexual harassment incident(s) in your claim. It's best to assume you have only 180 days to file, unless you are explicitly told otherwise by the EEOC. In any case, you should usually file as soon as possible so that the investigation can begin while witnesses' memories are fresh and so that any continued or threatened sexual harassment can be curtailed.

NOTE: The EEOC does not extend the time limit for accepting your claim because you first attempted to resolve your conflict through a company complaint procedure. You may, however, file a claim with the EEOC and ask them to defer any investigation until after you have completed a company procedure for resolving complaints of sexual harassment.

How Do I Write My Claim?

You do not have to submit your claim on a special form (though using the EEOCs forms may provide you with more of the information you need, in a more accessible format). According to EEOC regulations, the claim should include:

1. The full name, address, and telephone number of the person making the complaint, or of the person or organization filing a confidential complaint;
2. The full name or names and addresses of those charged with harassment, if known;
3. A clear, concise statement of the facts that constitute sexual harassment, including dates when the harassment occurred;
4. The approximate number of employees in the business where you work, if you know.

In naming those charged in your claim, you should ordinarily include both the name of the person or people who harassed you and the name of your employer (including the names of any parent company, franchiser, or affiliate). When you write your claim:

1. Give all the important facts, including relevant behavior and attitudes that may support your claim;
2. State the facts to your position, without doubts or qualifications that could weaken your claim (“Maybe I should have said something the first time he touched me.”);
3. Be conscious of the 180-day filing limit and make sure that at least some of the acts of harassment you cite fall within this period;
4. Be concise. You should cover all important facts and circumstances, but the EEOC will interview you to obtain a fuller account when they investigate the claim.

Can I Inquire About the Status of My Claim?

Yes. EEOC offices vary considerably in caseloads, procedures, and quality of personnel. Only a small percentage of the complaints the EEOC receive ever reach the courts—as few as 1 percent. Inquire regularly about the status of the EEOC investigation of your case. If you have an attorney, the attorney should also follow the investigation closely and periodically contact the agency. If you are concerned about the handling of your case, speak with appropriate personnel at the EEOC office. If you are unhappy with the quality of the investigation, request that your case be assigned to a new investigator.

Will My Complaint Be Anonymous?

You may not be able to maintain anonymity, even though the EEOC keeps your identity confidential. Because your claim must give very precise details and

name particular individuals and incidents, it will often be easy for employers, managers, and supervisors to determine your identity—and they are not legally bound to maintain confidentiality. Retaliation becomes a very real possibility. Report any indications of retaliation to the EEOC immediately and ask them to take protective action if necessary. Often the EEOC may suggest conciliation or some other agreement with the employer to resolve the complaint, and this usually requires disclosing your identity. If a solution seems near, this may not be problematic, but if it is a problem, try to get a commitment from the EEOC that it will go to court, if necessary, to prevent the employer from retaliating against you.

Can Investigations be Made by the EEOC Without Complaints?

The EEOC will only conduct investigations if charges have been filed.

How Do I Determine the Date when the Harassment Began?

The standard 180-day limit on filing your claim begins on the day the sexual harassment occurs, according to EEOC regulations. But determining this date can be problematic and crucial, since the ability to take advantage of Title VII's provisions depends upon it. Consider the following hypothetical circumstances:

A few weeks after you are promoted to a new position within your company, you begin to find pornographic photos and ads on your desk. You say nothing, hoping that whoever is putting them there will stop if you show no reaction. You are very upset, however, especially since you are new to this office and have no one there you can trust as yet. After a few more weeks this harassment stops. About a month later a co-worker with whom you have become friendly tells you that she saw another co-

worker putting one of the photos on your desk. She tells you that he is notorious for making sexual advances toward new female employees, and you confide in her that he has in fact made obnoxious sexual advances to you on several occasions. You avoid this man as much as you can and try not to be alone with him. Unfortunately, you are assigned to work on a project with him about five months later (the prospect makes you extremely uncomfortable and apprehensive). After a few weeks, while you are working together early in the morning, trying to meet a deadline, he grabs you and begins kissing and fondling you. You manage to get free and leave the office. Later, after your supervisor has arrived, you report the whole set of circumstances to him. He laughs and says that Gerry is a little obnoxious but harmless. "You'll get used to him," he declares. When you persist in demanding action to stop the harassment, your supervisor tells you that if you're unhappy, you can always ask for a transfer to your previous position (a demotion). After several weeks of anxiety, conversations with friends, and unsuccessful efforts to get assistance from the company's personnel office, you decide to file a complaint with the EEOC.

More than six months have passed since the first act of harassment (the first obscene photo on your desk). So if you date the harassment from this act, the 180-day time limit has expired. If you consider the act of harassment the sexual assault, you are well within the limit. You can use receiving the first obscene photo as evidence of a long pattern of harassing behavior, worsening the impact of the sexual assault you cite as the occasion of your claim.

There are several circumstances that may persuade the EEOC or the courts to allow you to file a claim beyond the deadline. The EEOC may extend the filing deadline if you have a compelling reason—such as illness—that made it impossible for you to file on time. If you can demonstrate

that you were misinformed about the motives behind certain key events relevant to your claim, you may be able to obtain an extension, if you file promptly once you discover the truth. For example, you may be laid off or transferred after you resist or report sexual harassment, ostensibly because of company labor needs but actually, you later learn, in retaliation for your response to the harassment. If your employer misleads you about your rights under the law in a way that causes you to delay filing a claim, you may also be granted an extension to file.

How Would the EEOC Investigate My Complaint?

The EEOC will contact the employer and the people specifically charged with sexual harassment within ten days after the claim is filed, usually by sending them a copy of your claim. They then have the right to file their own versions of the events described in the claim. Witnesses for either side may also submit written testimony.

NOTE: A victim has a right to see all information the EEOC obtains through its investigation and may use that information as evidence in any court proceedings.

The EEOC may request more information from you, through interviews or through a more detailed written statement. You may be asked to sit down with your employer and EEOC investigators in a fact-finding conference, to see what facts are agreed on.

The EEOC can seek a court order to protect you from retaliation by your employer while the investigation is ongoing. Although such legal action is not common, if you experience retaliation or threats of retaliation, you should report it to the agency and ask them to take protective action, including a court order, if necessary.

The EEOC also has subpoena power, often crucial in obtaining documents in employer files relating to your job performance, investigative reports of sexual harassment, personnel files to compare with your own performance reports, and so forth. A subpoena may also be used to force your employer or other witnesses to testify.