

## **Understanding and Avoiding Workplace Harassment**

By Jeff Burgess, Program Coordinator  
Oregon Bureau of Labor and Industries

If you are a jerk to a co-worker and he claims that you are harassing him, could you be sued for it? The answer is a resounding “maybe”. Merely being a jerk to someone does not mean that you have committed harassment as the law defines that term. Still, your conduct might be found to have violated a respectful workplace policy. Treating everyone with dignity and respect is really at the heart of state and federal laws prohibiting harassment in the workplace. If your poor treatment of someone is based upon their age or race or color or gender or religion or national origin or genetic information (family medical history), among other legally protected classes, that treatment may very well be unlawful. And if your employer knows or reasonably should know that it is going on but does not promptly put a stop to it, the organization may be held liable for the harassment as well.

Many people are under the mistaken belief that only sexual harassment is against the law. They read the salacious headlines, and because of sexual intrigue these cases get much of the attention, but harassment cases can arise in many other areas. In addition to those protected classes listed above, military service, family leave and disability are protected classes under both state and federal law. Oregon law provides several additional protected categories, such as sexual orientation and gender identity, marital status, family relationship, injured workers, credit history and victims of domestic violence, sexual assault, stalking and criminal harassment. People who file a lawsuit, testify in civil or criminal cases, report criminal activity, people who lawfully use tobacco products during off-duty hours, those who oppose unsafe or unhealthy working conditions or who report healthcare violations are also protected. People who associate with members of a protected class are also afforded legal protection. If I am friends with a person who files a workers’ compensation claim or testify on behalf of that person, I am protected from harassment or discrimination that is directed toward me because of my friendship or testimony. If I make a complaint of harassment in good faith, even if my complaint is unfounded, I am protected from retaliation under the harassment laws.

Courts define unlawful harassment as severe or pervasive words or physical actions based on someone’s membership in a legally protected class that are unwelcome and that a reasonable person would find to be unwelcome under the same or similar circumstances. A separate legal theory applied most frequently in sexual harassment cases exists if an employer bases employment decisions on a person’s submission to or rejection of sexual advances or if submission to sexual advances becomes a term or condition of employment. Conduct is sufficiently severe or pervasive if it interferes with work or creates a hostile, intimidating or offensive work environment. Employers should communicate in clear written policies that harassing behavior will not be tolerated and that all employees have a duty to report suspected harassment to management, whether it comes from a co-worker, a supervisor or even a non-employee. Complaints should be taken seriously and investigated promptly, impartially and thoroughly. If harassment is found to have occurred, the law requires immediate and effective corrective action. That

action could be counseling and training, written warning or suspension in milder cases or termination in more severe cases. Periodic training, good policies and effective supervision are the keys to preventing harassment on the job in the first place. It is always preferable to prevent harassing behavior rather than fixing a problem that has already taken place.

For more information on this and other topics of interest to employers, please visit our website at [www.oregon.gov/BOLI/TA](http://www.oregon.gov/BOLI/TA) or give us a call at 971/673-0824. We are conducting a full-day harassment training seminar in Portland on March 15. Registration forms are available on the website.