

## Quid Pro Quo and Hostile Work Environment

Under Title VII there are two recognized types of sexual harassment quid pro quo sexual harassment and hostile environment sexual harassment.

### Quid Pro Quo

One party forces the other party to offer sex in return for recruitment, promotion or salary raise within the first party's powers, and threatens to demote, cut the salary or even fire the second party if rejected.

In Latin it means "this for that". This is usually the most blatant kind of sexual harassment. This occurs when employment decisions are based upon an employee's willingness to grant sexual favors in exchange for working benefits such as promotions, increases, preferred assignments or punishment such as being demoted or fired. This type of harassment, typically involves a harasser who has authority over the victim.

According to federal guidelines, a single "quid pro quo" advance may be considered harassment if it is linked to an employment benefit.

### Hostile Environment

A "hostile environment" is a work atmosphere in which a pattern of offensive sexual conduct is involved. The administrative rules describe it as "Any unwelcome verbal or physical conduct that is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with work performance or creating an intimidating, hostile, or offensive working environment." OAR 839-005-0030(1)(b) and (2)

When one party interferes with the work performance of the victim in an unreasonable manner, intentionally leaves the victim in an intimidated or hostile work environment, or exposes the victim to a rude, lewd and uncomfortable work environment, it constitutes a hostile environment due to inappropriate sexual harassment. The conduct can include verbal, non-verbal, visual, or physical.

Elements which courts analyze in determining whether a hostile environment harassment claim is valid include:

- Whether the conduct was verbal, physical, or both;
- Frequency of the conduct;
- Whether the conduct was hostile or blatantly offensive;
- Whether the alleged harasser was a co-worker or manager;
- Whether others joined in perpetrating the harassment; and
- Whether the harassment was directed at more than one individual or singled out the victim.

## FORMS OF SEXUAL HARASSMENT

Much of sexual harassment is based on what is considered as "unwelcome" behavior. Unwelcome behavior is behavior that is not solicited or wanted by the offended person.

The intent of the behavior is not important, the perception of the behavior by the offended person is. Regardless of the intent, "I didn't mean anything by it" does not justify or validate the perceived harassing behavior.

The “Reasonable Person” standard is used by the courts to assess if particular conduct is illegal by determining whether a reasonable person would find it severely or pervasively offensive under similar circumstances.

Sexual harassment manifests itself in different forms – verbal/written, physical, and visual.

### **Verbal**

Verbal or written is probably the most obvious form of sexual harassment—and the one you come across most often. Examples may include:

- Offensive jokes of a sexual nature or sexist nature
- Repeated and unwelcomed requests for sexual favors
- Repeated and unwelcomed requests for dates
- Excessive and unwelcomed flirting
- Threats regarding adverse employment action if sexual favors are not granted
- Unwelcome compliments of a sexual nature

You'll notice this form of sexual harassment involves repetitive and excessive unwelcome conduct. An isolated verbal or written incident may not rise to the level of sexual harassment but may violate the professional workplace policy. On the other hand, if a single incident is egregious enough, such as demanding sex to keep a job, one incident may be enough for sexual harassment.

The biggest thing to watch out for nowadays is technology. For example, if one employee forwards an email with a suggestive or pornographic image, it can circulate to the point where everyone in the office sees it—even if that’s not the original sender’s intent.

### **Physical**

Physical harassment might be a little harder to recognize because it can sometimes be very subtle. Physical harassment, in relation to sexual harassment, is when a victim is inappropriately touched. Most importantly, the victim is touched against his or her will.

Examples may include:

- Touching may include massaging a person on any body part without first asking permission;
- Playing with a person’s hair.
- Caressing a person’s arm, hand, or any body part in a sexual way.
- Making bodily contact with another person in a sexual way.
- Cornering a victim with one’s body.
- Lewd hand gestures or other gestures meant to convey curse words.
- Unwanted touching of a person or their clothing.
- Frequently following or standing too close to a person on purpose.
- Making sexually suggestive facial expressions.
- Playing music with offensive or degrading language.

### Visual

Visual sexual harassment is probably the hardest to spot because it's the most subjective and really requires you to put yourself in the shoes of the reasonable person.

Examples may include:

- Wearing clothing with offensive or vulgar language
- Displaying posters or pictures of a sexual nature
- Showing other people sexually suggestive text messages or emails
- Drawing violent or derogatory images

For example, someone might have a comic strip displayed at their workstation and while most people might find the joke funny, someone else might find it offensive.

## REPORTING

Anyone who is subjected to or aware of what they believe to be any type of discrimination or harassment should report the behavior to their immediate manager, another manager, or the agency, board, or commission's HR section, the executive director or chair, or the DAS Chief Human Resources Office. All discrimination and harassment complaints must be investigated, even if the person reporting the allegations is not requesting or wanting an investigation.

A report of sexual harassment is considered a complaint. A manager receiving a complaint should promptly notify their agency human resources section. Human resources is usually involved and will investigate the allegations to establish the facts.

The complaint can be reported orally or in writing and should include all of these items.

1. The name of the complainant and the name of the person that was subjected to the discrimination or harassment if they are not the same person;
2. The names of all the parties involved, including witnesses;
3. A specific and detailed description of the alleged conduct or action the employee believes is discriminatory or harassing;
4. The date or time period in which the alleged conduct occurred; and
5. A description of the desired remedy.

## BYSTANDER INTERVENTION

Darley and Latane, the forefathers of bystander intervention, identified five decision making steps that people move through when taking action in a problematic situation. These steps may not be linear.

### Step 1 – Notice Potentially Problematic Situations

While some situations are easily noticeable, many other situations are better characterized as problematic or high-risk behaviors that are likely to escalate, including:

- Atypical or withdrawn behavior.
- Controlling behavior.
- Making offensive jokes or comments of a sexual nature or sexist nature.
- Excessive and unwelcomed flirting.
- Making unwelcome compliments of a sexual nature.
- Making bodily contact with another person in a sexual way.
- Cornering a person with one's body.
- Making lewd hand gestures or other gestures meant to convey curse words.
- Making sexually suggestive facial expressions.

### Step 2 – Identify When It's Appropriate to Intervene

The next step is interpreting the situation as a problem in need of intervention.

Are the two people standing close together being affectionate, or is one being intimidating or aggressive towards the other? Has your co-worker seemed depressed for more than a week or two? Are they constantly trying to avoid a certain person?

You may have to gather more information by:

- Observing the situation.
- Checking in verbally.
- Asking someone else what they've seen.

You may not be the person who needs to take direct action, but by identifying problems, you can help put the right solutions in place.

### Step 3 – Recognize Personal Responsibility for Intervention

The question here is "do I need to act?" It can be easy to assume that others will intervene so you don't have to.

We are more likely to recognize the situation as requiring our help if

- No one else is around; and/or
- We can relate to the issue on a personal level. We would want help if we were in that position or we understand the impact the situation could have if it continues.

Even if it seems like the situation is "not your business" or someone else should intervene, you may need to help make that happen.

### Step 4 – Know How to Intervene

This step involves acquiring skills and developing a range of strategies that lead to effective interventions. Knowing how to intervene safely and effectively improves our ability and willingness to intervene.

### Step 5 – Take Action to Intervene

There are multiple of options when it comes to intervening. Learning an array of direct and indirect approaches allows you to choose the one(s) that fit the particular situation and your comfort level.

## Strategies for Intervening

This section will provide you with some strategies to intervene when you are witnessing sexual harassment. There are different ways to intervene — direct, distract, delegate, and delay.

### 1. Direct intervention

You may want to directly respond to sexual harassment by naming what is happening or confronting the harasser. This tactic can be risky: the harasser may redirect towards you and may escalate the situation. Before you decide to respond directly, assess the situation: Are you physically safe? Is the person being harassed physically safe? Does it seem unlikely that the situation will escalate? Can you tell if the person being harassed wants someone to speak up? If you can answer yes to all of these questions, you might choose a direct response.

If you choose to directly intervene, some things you can say to the harasser are:

- “That’s inappropriate, disrespectful, not okay, etc.”
- “Leave them alone.”

The most important thing here is to keep it short and succinct. Try not engage in dialogue, debate, or an argument, since this is how situations can escalate. If the harasser responds, try your best to assist the person who was targeted instead of engaging with the harasser. Direct intervention can be risky, so use this one with caution.

### 2. Distraction

Distraction is a subtler and more creative way to intervene. The aim here is simply to derail the incident by interrupting it. The idea is to ignore the harasser and engage directly with the person who is being targeted. Don’t talk about or refer to the harassment. Instead, talk about something completely unrelated. You can try the following:

- Ask them if you can talk to them about a work item. Ask for the time. Talk to them about something random and take attention off of the harasser.
- Get in the way. Continue what you were doing, but get between the harasser and the target.
- Accidentally-on-purpose spill your coffee or make a commotion.

Of course, read the situation and choose your distract method accordingly. The person who is being targeted will likely catch on, and hopefully your act or statement will de-escalate the situation.

### 3. Delegation

Delegation is involving a third party, usually an authority figure. Bring your manager, human resources, or safety manager over into the situation.

### 4. Delay

Delay is where you check in with the victim of the incident after it has occurred to see if you can do anything to help them. Maybe you weren't there when the incident happened, but you see someone looking really upset.

Even if you can't act in the moment, you can make a difference for the person who has been harassed by checking in on them after the fact. Many types of harassment happen in passing or very quickly, in which case you can wait until the situation is over and speak to the person who was targeted then. Here are some ways to actively use the tactic of delay:

- Ask them if they're okay and tell them you're sorry that happened to them.
- Ask them if there's any way you can support them.
- Offer to accompany them to their destination or sit with them for a while.
- Share resources with them and offer to help them make a report if they want to.
- If you've documented the incident, ask them if they want you to send it to them.

Whatever tactic you use, the key is preparation. Think about it beforehand, and decide on a strategy you think you can execute. Rehearsing can help you make decisions more quickly in a heated situation. And tailor your bystander strategy to fit your identity and personality.

These four D's of bystander intervention are just the beginning. Get creative. Start small and intentionally. Hear a racist joke? Shooting a frustrated look at the teller of the joke is better than laughing along. An audible sigh can stop the next joke from coming sometimes.