

SC Sexual Harassment:  
Policy and Prevention  
Full Course

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# Introduction

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## Sexual Harassment Still Prevalent

It's widely understood that sexual harassment is unlawful in educational and work environments. Unfortunately, it's clear from case law and news headlines that it's still prevalent, and it's a challenge many institutions must face. But there's a lot of confusion about just what exactly is sexual harassment.

It's critical that supervisors and managers at postsecondary institutions:

- understand the law regarding sexual harassment (and)
- know their roles and obligations

It's no surprise that topic of sexual harassment raises some common questions among college and university staff members.

## Questions

Common questions include:

- Can any joke about the opposite sex be harassment?
- Is dating someone we work with itself technically against the law?
- What if you accidentally look at someone the wrong way?
- Is there such a thing as same-sex harassment?

Nearly everyone recognizes that a person with authority over a student or employee exchanging extra "benefits" for sexual favors is wrong, harassment issues can be far more complex. This often creates confusion.

## Real Concerns

It's not uncommon to hear someone express real concerns about that confusion.

When there is a significant amount of confusion, someone may be fearful of making a joke, or in some extreme cases, even looking at or complimenting a student or colleague in fear of being accused of sexual harassment.

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## **Supervisors and Managers**

Minimizing confusion is especially critical for supervisors and managers who are on the front lines of protecting all employees from harassment. This means, however, that supervisors and managers have to be especially well-versed on what constitutes sexual harassment and what doesn't.

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## Importance of Training

Training is key. To keep our learning and work environment free from sexual harassment requires that supervisors and managers must be able to recognize sexual harassment in its many forms – and also to recognize what *isn't* sexual harassment.

False harassment claims can also be very damaging to everyone involved.

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## **Model Your Employer's Policy**

This is where *you* come in. Your leadership characteristics have earned you supervisory responsibilities in your institution. This means that you share the burden of safeguarding your learning and work environment from sexual harassment.

It also means that you can help ensure that any alleged incidents of sexual harassment are properly investigated in a manner consistent with your institution's policies and procedures.



## Goal

The goal of this course is to provide college and university faculty and staff members who have supervisory responsibilities with information essential to leading a learning and work environment that is free of harassment and discrimination.

By the end of this course you'll be able to:

- recognize hostile environment and quid pro quo sexual harassment
- describe how to handle sexual harassment complaints
- discuss legal remedies for people who have experienced sexual harassment (and)
- review sexual harassment policy considerations

Later you'll have a chance to test what you've learned with a quiz.

So, if you're ready, let's begin.

# Sexual Harassment: Know the Facts

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## Get the Facts: Question 1

So, how much do you already know about how to respond to sexual harassment complaints? Let's say an employee meets with you privately and makes a sexual harassment complaint about a supervisor. How quickly should the sexual harassment investigation begin?

- Now. Immediately accompany the employee to confront the supervisor who is being accused?
- Within 24 hours?
- Before the end of the week? (or)
- No investigation is necessary at this point?

## **Get the Facts: Question 1 (cont.)**

The investigation of the complaint should begin within 24 hours. You must ensure that the complaint is immediately submitted to the appropriate, designated person in your institution.

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## Question 2

Here's another question: Two co-workers develop a consensual romantic relationship. Neither is a supervisor or has any workplace authority over the other. Does the law prohibit these kinds of relationships relationships? Is it:

- Yes?
- Maybe? (or)
- No?

## Question 2 (cont.)

The answer is **no**.

The law does not prohibit consensual relationships between peer co-workers. However, it's generally a bad idea for a supervisor to have a romantic relationship with a subordinate and may be prohibited by your institution's sexual harassment policies.

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### Question 3

Here's another scenario: One particular employee occasionally tells sexually explicit jokes in the presence of other employees. All of the employees laugh at the jokes. And no one has ever complained. Could one of the employees make a sexual harassment complaint? Is it:

- Yes. An employee can make a complaint later. (or)
- No. An employee cannot file a complaint because they must object to the behavior at the time it occurs.



### Question 3 (cont.)

The answer is **yes**. It's possible. And an employee may feel peer pressure to laugh along with the jokes, but still find the attempted humor unwelcome.

If a supervisor or manager overhears the jokes, they are obligated to take appropriate disciplinary action.

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## Question 4

According to the Equal Employment Opportunity Commission, what's the best tool to eliminate sexual harassment in the workplace? Is it:

- prevention
- skillful lawyers representing the organization
- thorough investigation of complaints (or)
- maintaining good documentation

#### **Question 4 (cont.)**

The answer is **prevention**.

There are a variety of strategies that can reduce or eliminate sexual harassment complaints.

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### **Question 5**

Now, if an employee receives a series of text messages containing unwanted sexual comments from another employee, could this be grounds for a sexual harassment complaint? Is it:

- Yes. It does not matter if the harassing behavior occurs in person or via other forms of communication. It still may be sexual harassment. (or)
- No. Although the behavior may be immature, it is not serious enough to meet the definition of sexual harassment.



### Question 5 (cont.)

The answer is **yes**.

The text messages could be considered a form of verbal sexual harassment. The communication is unwanted and may create a hostile work environment.

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# A Costly Problem

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## **A Costly Problem**

Sexual harassment is a term that's familiar to nearly everyone. And each year, employers pay millions in monetary claims. Needless to say, sexual harassment is a costly problem for employers.

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## Devastating Effects

This illegal behavior can also have a devastating effect on those involved. Sexual harassment can contribute to:

- absenteeism
- excessive turnover
- morale declines (and)
- health issues

It's far more than just a work issue between two people.

## Defining Sexual Harassment

So, what *exactly* is sexual harassment and where do we begin?

First and foremost, sexual harassment is a form of discrimination, and is illegal under both state and federal law.

In fact, institutions that receive state and federal funding can lose these funds if they fail to protect workers against sexual harassment, not to mention the additional costs of lawsuits from individuals.



## A Cost to Work Environments

Sexual harassment can:

- impede morale
- inhibit learning
- damage careers
- injure the person experiencing harm emotionally, psychologically and even physically

It's illegal and disrespectful. And it's harmful to healthful, productive learning and work environments.

## **Costly Consequences**

While the person being harassed is the focus of concern, harassers themselves have much to lose as well.

Disciplinary actions and legal recourse can cost the perpetrator their career, family health, personal health and monetary well-being.

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# Discrimination

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## Anti-Discrimination Law

Preventing sexual harassment falls under anti-discrimination law because it's a form of discrimination.

Federal laws that protect against discrimination include:

- Title VII of the Civil Rights Act
- Title VI of the Civil Rights Act
- Title IX of the Education Amendments Act
- Family and Medical Leave Act
- Section 504 of the Rehabilitation Act
- Americans with Disabilities Act (and)
- Age Discrimination and Employment Act



## EEOC Requirements

According to state and federal laws, and federal Equal Employment Opportunity Commission (EEOC) regulations, employers are prohibited from making employment decisions or harassing employees based on characteristics such as:

- gender
- sex
- race
- ethnicity
- national origin
- religion
- age
- genetics
- sexual orientation
- gender identity
- marital status
- medical condition
- veteran status
- disability or
- pregnancy and pregnancy-related conditions

## Supreme Court Decisions

In 1986, the Supreme Court of the United States held that sexual harassment was a form of discrimination, placing it under the provisions of the **Civil Rights Act of 1964**. This Supreme Court decision set the stage for landmark legislation that gave workers protection against sexual harassment.

In another landmark case decided in 2020, the Supreme Court held that discrimination against a person based on sex includes an employer's actions based on a person's sexual orientation or gender identity.

## **Title VII and Title VI**

The principles included in the **Civil Rights Act of 1964** were first described by President John F. Kennedy in 1963. Title VII of the Act prohibits employment discrimination based on race, religion, sex or national origin.

In the 1970s, lower courts began determining that sexual harassment was also prohibited under Section VII. In 1986, the Supreme Court ruled that sexual harassment is a form of sexual discrimination and is prohibited by Title VII. And in a 1998 decision, the Court ruled that same-sex discrimination was also prohibited by Title VII.

Title VI of the Civil Rights Act of 1964 broadened the scope of protection against discrimination on the basis of race, color, and national origin to include all programs and activities that receive financial assistance, including educational institutions.

## **Title IX of the Education Amendments Act**

In 1972, federal legislation was passed to prohibit discrimination based on sex in programs and activities that receive financial assistance, including higher education institutions. The U.S. Department of Education's Office for Civil Rights (or OCR) enforces Title IX to ensure that all institutions that receive federal funds comply with Title IX's protection against discrimination and harassment based on sex, including pregnancy and pregnancy-related conditions, sexual orientation, and gender identity.

Another key issue for OCR's Title IX enforcement is retaliation by an institution against any person who reports or files a complaint alleging sex discrimination, or who participates in a Title IX proceeding.

## Title IX Definition of Sexual Harassment

While this course focuses on sexual harassment prohibited by Title VII, it's important to point out that Title IX also protects employees and students against sex discrimination in education programs and activities. This includes sexual harassment defined as:

- unwelcome conduct on the basis of sex that is "so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity"
- quid pro quo sexual harassment (and)
- sexual assault, dating violence, domestic violence, and stalking

## **The Americans with Disabilities Act**

The **Americans with Disabilities Act**, as amended in 2008 (ADA), prohibits employment discrimination or retaliation against persons with an actual, history of, or perceived physical or mental impairment that limits a major life activity.

The EEOC explains that the ADA protects persons with a disability against employment decisions that are based on an employee's impairment that resulted from experiencing domestic or dating violence, sexual assault or stalking.

Section 504 of the Rehabilitation Act prohibits discrimination against postsecondary students with a disability who meet the academic and technical standards for admission or participation in the institution's educational program or activity.

## **Family and Medical Leave Act of 1993**

The **Family and Medical Leave Act (or FMLA)** sets minimum standards regarding employer policies involving unpaid leave. It recognizes the need for employees to balance family, work and other non-work obligations, and offers a variety of protection to workers.

FMLA creates national standards governing instances when persons need to leave employment for family or medical reasons. The law makes clear that supervisors and employers must apply family leave laws fairly and equally to all employees. This guarantee of fairness helps ensure that denial of family leave is not exploited for purposes of sexual harassment.

## **Age Discrimination and Employment Act**

The **Age Discrimination and Employment Act (ADEA)** was first passed in 1967. However, it was amended in 1986 and again in 1991 as the Older Workers Benefit Protection Act. The law prohibits employment discrimination against persons 40 years of age or older.

The ADEA's anti-discrimination standards cover a wide variety of issues including hiring/firing, denial of benefits, mandatory retirement, and other policies that could be exploited by an unethical supervisor who is engaged in sexual harassment.



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## Unwelcome Behavior

The laws we discussed prohibit sexual harassment in the workplace. But what is sexual harassment, really?

A key element of sexual harassment is that it is unwelcome, which also means *unwanted* or *uninvited*. Right away this could pose a challenge to you as a supervisor.

Why? Behaviors can be unwanted or unwelcome to some and welcome or even invited by others. But it's your job to make sure that none of your staff is subjected to unwelcome conduct – especially by you – that could be construed as sexual harassment.

## **Welcome and Unwelcome Behaviors**

It's also important to recognize that some behaviors – such as telling offensive jokes or even laughing at them – can be considered “unwelcome” by the offended employee. To determine if actions are “welcome” or “unwelcome,” it's necessary to consider all of the circumstances.

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## Key Questions

For these determinations, the following questions may be helpful:

- Was the behavior offensive enough to be deemed “unwelcome”?
- Did the offended employee complain about the conduct?
- Did the offended employee understand the complaint procedure? (and)
- Did the offended employee invite or initiate the conduct?

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## **Sexual Nature**

The EEOC's definition of sexual harassment under Title VII also identifies sexual harassment behaviors as being of a “sexual nature.” Sexual advances, requests for sexual favors, sexual jokes and other types of physical and verbal conduct can be sexual harassment.

It does not matter if the person engaging in the conduct intends to offend or shock others – if the conduct is sexual in nature, it is problematic.



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## **Sexually Explicit Jokes**

Although these types of questions may be helpful to you as you evaluate a situation, it's important to remember that sexually explicit jokes or conversations are not appropriate in a learning and work environment.

Although a person may participate in such jokes or conversations, they may still view the sexual subject matter as "unwelcome." If you hear such joke-telling or conversations, or otherwise learn of them occurring in your institution, you should put an end to them immediately.



## Scenario 1

Let's take a look at a scenario:

Ahmad learns that he's not been chosen for a position that he applied for. He believes it's because he is male. All of the other employees with the same job title are female, including the supervisor. He is sure that he is the best candidate. Should Ahmad file a complaint?

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## Scenario 1 (cont.)

Well, it depends. If the supervisor told Ahmad that he was not hired because she wanted a female employee, it may constitute discrimination. On the other hand, if there is a bona fide occupational qualification reason that Ahmad was not hired, it may not be discrimination.

It's important for supervisors to recognize that each situation is unique, and proper investigations must be conducted with that assumption.



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## Scenario 2

Regina gets a call from the payroll director saying that he's close to giving her the payroll coordinator position, but then insinuates that some "special attention" from her will help him finalize the decision. Is this sexual harassment?

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## **Scenario 2 (cont.)**

In all likelihood, it is. But again, a proper investigation will bring the pertinent details to light and help determine if the allegations are indeed sexual harassment.

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## Damages to the Victim

A person who has suffered unlawful discrimination or harassment may go to court and have a jury decide if the law was violated. If a violation is found in a federal court action, the victim could be awarded:

- back pay
- front pay
- compensatory damages
- attorney's fees and the costs of litigation, and
- punitive damages in a case involving an especially malicious or reckless act of discrimination



# Harassing Behaviors

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## Two Types of Sexual Harassment

The U.S. Supreme Court and EEOC guidance have recognized two types of unlawful sexual harassment under Title VII:

- quid pro quo (and)
- hostile work environment

What do these terms mean, and how do they relate to sexual harassment?



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## Quid Pro Quo

Quid pro quo means “this for that,” or giving something in exchange for something else. In the context of sexual harassment, quid pro quo occurs when a person with authority offers something of value (such as a grade or promotion) in exchange for sexual favors.

Quid pro quo is also an issue when an employee or a student has to deal with a negative outcome for refusing to go along with the overt or suggested sexual demands of a person with authority.



## Quid Pro Quo Example

Here's a scenario. Bob is Mary's supervisor. One day, Bob tells Mary that unless she sleeps with him, she will receive a poor performance review and no annual wage adjustment.

By making a favorable employment decision contingent upon agreeing to an unwanted sexual advance, Bob has committed quid pro quo sexual harassment. Bob has tied a work condition to a sexual relationship. While this example is blatant, quid pro quo sexual harassment can be more subtle as well.



## **Hostile Work Environment**

A hostile work environment is created when a persistent pattern of sexual aggressiveness interferes with a person's work or academic performance.

Most claims of sexual harassment result from this type of harassment. There are many factors that can contribute to a hostile learning and work environment and it's important to be aware of them.

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## Sexual Behavior

Some examples of sexual behavior that may create a hostile work environment include:

- crude or sexually oriented jokes
- inappropriate language
- vulgar gestures
- touching someone without their consent
- explicit objects in the workplace such as photos, magazines, posters or memes (and)
- repeated unwanted advances



## Identifying a Hostile Work Environment

Hostile environment sexual harassment differs from quid pro quo harassment. There isn't necessarily a promise of benefits given in exchange for sexual favors granted or taken away if the person does not cooperate.

Instead, it's considered a hostile environment if there is such a degree of unwelcome sexually oriented behavior in the work or academic environment that a person becomes unable to perform their job or complete their education.



## Standards for Evaluating Conduct

The U.S. Supreme Court created standards for evaluating on-the-job conduct to help in determining whether a behavior should be considered hostile environment sexual harassment under Title VII. The conduct has to be:

- verbal or physical sexual conduct
- so severe or part of a pattern that it unreasonably interferes with a person's work performance or creates an abusive working environment (and)
- offensive to a reasonable person under similar circumstances

Now let's examine what those terms imply.

## Severe Behavior

Severe behavior is different from an occasionally bothersome remark or gesture. Trivial or annoying sexual conduct that does not alter a person's job conditions does not create a hostile environment.

Again, however, as someone with supervisory responsibilities, you must recognize that sexual conduct has no place in a learning and work environment; therefore, you should be troubled by even a stray or isolated sexual comment. Such behavior must be addressed immediately before it becomes “severe.”

## **Patterns of Behavior**

If a pattern of sexually offensive behavior occurs in the workplace, it is usually enough to qualify as a hostile work environment. Even two or three instances is often enough to call it a pattern. Conversely, a single instance would not constitute a pattern.

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## Offensive Behavior

You must also consider whether the behavior is offensive to a reasonable person standing in the “complainant’s” shoes. Someone who is offended by any mildly sexual comment is not to be the objective benchmark for the reasonable person standard.

A “reasonable” person is one who would be offended by crudely explicit sexual remarks, but "not petty slights suffered by the hypersensitive," as one federal court explained.



## **Offensive Behavior: Additional Information**

In addition, you should also consider the experiences of non-binary, transgender, and gender expansive people, which may include offensive or derogatory remarks about sexual orientation or a person's transgender status.

For example, using a transgender person's wrong name and pronouns may become unlawful harassment if it is frequent or severe, or both.

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## Response to Harassment

It is important to note that the person being harassed is not required to tell the harasser to stop or that the conduct makes them feel uncomfortable.

The harassing behavior is determined to be sufficiently severe or pervasive, and possibly sexual harassment, based on the objective standpoint of a "reasonable person."

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### Scenario 3

Here's another scenario: Gary is a department head at a local community college. Natalie, an office manager at the college, is often called in to work with him. Before and after others arrive in the office, he often tries to turn the conversation to personal things about her, such as what she likes to do on dates and what kind of clothes she likes to wear. This makes Natalie uncomfortable, and she tries to redirect the conversation whenever possible.

Natalie stops you in the hallway as you're rushing to an important meeting. She looks concerned and says she needs to talk to you about Gary's behavior, what should you tell her?

### **Scenario 3 (cont.)**

While you don't know all of the details, you should tell Natalie that you're on your way to an important meeting but can meet with her in an hour when you can give her your full attention.

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### **Scenario 3 Answer: Gray Area**

Although Gary is not using overtly sexual language in talking to Natalie, he is discussing personal matters, along with her physical appearance. His conduct may not be considered offensive to a reasonable person, but it is in a troubling gray area. Such personal discussions do not belong in the work environment.

It's true that this situation needs to be addressed before Gary's language starts becoming more sexual and uncomfortable in nature, or he decides to make a more deliberate sexual gesture to Natalie, and his conduct escalates into sexual harassment.

Quid Pro Quo

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## Quid Pro Quo

“Quid pro quo” is a form of sexual harassment which means “this for that,” in Latin. In other words, something is given or withheld in exchange for something else.

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## **Exchanging Some Benefit**

Quid pro quo sexual harassment occurs when a person in authority makes unwelcome sexual advances or requests sexual favors in exchange for some employment or academic decision or benefit. The offender could also withhold the favorable decision or benefit if the employee does not comply. This behavior is extremely serious and damaging.

“Quid pro quo” sexual harassment can occur at any level of an institution, and to any employee, regardless of whether the persons involved are members of the opposite sex or same sex.

## **Response to a Complaint**

It's important to instruct employees to share information with a supervisor or manager if they have experienced unwelcome sexual conduct by someone in your learning and work environment.

You should thank them for coming forward, then document details regarding the incident and investigate the complaint in accordance with the institution's sexual harassment policy. This ensures a safe resolution for everyone.



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## Scenario 4

Marta, a campus shuttle bus driver, finds herself in a difficult situation after rejecting the advances of Kevin, the transportation director.

At the end of the year, Marta was taken off her usual route, which she had worked for years. Her overtime had also been cut significantly but other drivers seemed to be getting plenty of extra hours. When she asked Kevin for an explanation, he responded only with a vague, "You know why."



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## Scenario 4 (cont.)

In addition, Kevin often ignored her requests to drive additional hours and extra assignments. One day, Marta called Kevin for assistance regarding a schedule conflict. He said “I *might* be willing to help you if you gave me some *motivation* to help you.”

Marta suspected that these actions were in retaliation for her rejection, but she had no direct proof that Kevin had even propositioned her.

What should Marta do?

## Talk to Kevin?

One option is to talk to Kevin. While talking with Kevin may help, the circumstances are very serious. Kevin may decide to conceal his wrongdoing and attempt to discredit Marta with poor reviews and rumors.

Even if Marta were to invite a witness to the discussion with Kevin, it could unnecessarily escalate the situation to a higher degree of conflict or possibly worse.



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## Find a New Job?

Marta might think about looking for a new job. This choice may feel like the best "escape," but it's fraught with problems. Kevin may repeat the behaviors with another colleague. Harassing behaviors of a sexual nature are often repetitive without discipline or correction.

The organization still has potential liability for former workers. Prospective employers will likely contact Kevin before hiring Marta and he may give a false impression about her behavior.



## A Safe Decision

Talking with her supervisor or manager is a safe decision. Marta recognized that sexual harassment is a form of discrimination and that there was a lot at risk, including potential for harm.

The institution's policies and procedures should include an investigation method that is careful to protect the reputations of all involved during the process and dictate the specific steps that need to be taken.



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## **A Thorough Investigation**

Kevin's behavior not only compromises workplace morale, it also exposes the organization to liability on a number of fronts. The director, or other manager, has every interest in conducting a thorough investigation that protects all parties in accordance with policy. Always follow the procedures that are detailed in your institution's sexual harassment policy.

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# Hostile Work Environment

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## **Substantial Interference**

A hostile work environment is created when a persistent pattern of sexual aggressiveness interferes with a person's work environment.

In a hostile work environment, the behavior creates an "intimidating, hostile or offensive" work environment. And it can have either the purpose or effect of "substantially interfering" with a person's education or employment.

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## **Focus on Sexual Harassment**

While the definition of a hostile work environment is broad, this course focuses on hostile or offensive behaviors that relate to sexual harassment.

A common example these days is sending offensive emails, even though some might perceive the content as humorous. This is behavior that could be considered hostile.

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## **Occurs at All Levels**

Hostile work environments can occur at all levels of an institution, involving executives, supervisors, co-workers and outside vendors. Although male-to-female sexual harassment is more common, institutions should also be concerned about female-to-male, same-sex harassment, and harassment based on gender identity.

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## Potentially Devastating Effects

Some employees are unaware that offensive behaviors that contribute to a hostile work environment can have devastating effects – not only on individuals in the work environment, but on the institution as a whole. It's important that all staff, and especially those with supervisory responsibilities, have a clear understanding of how harmful sexual harassment can be to individuals and the institution.

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## Negative Consequences

Negative consequences can include:

- reprimands/terminations
- declining physical and emotional health
- physical violence
- lawsuits
- criminal prosecution (and)
- suicide-related thoughts or actions

With proper training and clear communication of policies, hostile work environments – and their negative consequences – can be avoided.

## Scenario 5

Tom is a maintenance worker who routinely makes lewd comments and gestures to female staff workers. Tom does not touch or threaten them, but his behavior is definitely offensive. Managers have not yet observed Tom's comments or gestures.

Emily, an administrative assistant, is an industrious worker. Although she keeps to herself and is a bit shy, she likes her work and prides herself on a job well done.



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## Scenario 5 (cont.)

One afternoon while Emily is photocopying some reports, Tom enters the copy room with a broom and a mischievous look. He immediately gives Emily a prolonged stare, focusing on her body as if "sizing her up." Emily pretends to ignore him.

After glancing around to make sure no one is looking, Tom moves much more clearly into Emily's view and makes an obscene gesture with the broom. Emily cannot help but notice, which is clearly Tom's intention. Emily is both humiliated and furious and storms out of the room as Tom laughs.

What should Emily do?

## **Ignore the Problem?**

One option is to ignore the behavior. But ignoring the behavior will ensure that the offensive gestures will likely continue. Tom could even construe Emily's silence as "consent" and then attempt something worse – including touching or threatening. Others may also be at risk. Tom's behavior may not be limited to Emily.

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## **Confront Tom?**

Emily could have also put Tom on notice with a stern warning, making it clear that she does not consent. She is not required to do this, and it may not help. The behaviors may persist. Tom could even doubt Emily's resolve, thinking that she's just making an idle threat or just playing tough.

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## **Best Action**

The best action for an employee is to share information with a supervisor or manager. They will then document details regarding the incident and investigate the complaint in accordance with policy. This ensures a safe resolution for everyone.

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## **Your Organization's Policy**

Always follow the steps that are detailed in your institution's sexual harassment policy and, to the extent possible, protect complainants by keeping the incident report anonymous while pursuing the investigation. Ideally, Tom will be receptive to correction and stop his offensive behaviors.

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## Scenario 4

Ari identifies as non-binary and has they/them pronouns. They just started their second week as a department administrator, coordinating meetings and schedules, and managing communication duties.

Throughout the work day, Ari answers a lot of email messages and phone calls. So it's not uncommon for a faculty or staff member to speak with Ari on the phone or via email before meeting them in person.

But Ari has noticed lately that when someone *does* meet Ari in person for the first time, they tend to have slightly surprised expression, sometimes saying, "You look different than I expected" or, "from your voice, I pictured someone different." Even though Ari has only just started the job, they've gotten a bit exhausted having to explain over and over their gender identity.

Ari complains to you about these comments. How should you respond?

## Scenario 4: Outcome

Ari's complaint raises an important issue that needs to be addressed before it becomes a bigger problem. The first step is to discuss with Ari how they would like you to inform others of their preferred name and pronouns so that they are not having to explain their gender identity over and over again. Keep in mind that this is a very personal issue and Ari's input on how this is handled should be respected.

This is also a legal issue. The EEOC has provided guidance that unintentional misgendering conduct does not violate Title VII, but if the conduct is intentional and repeated, misgendering could support a hostile work environment claim. The institution's sexual harassment policy should include misgendering and preferred names and pronouns should be part of the onboarding process.

## **False Allegations**

Could an investigation find the employee falsely accused? Yes. Supervisors must take allegations seriously to protect employees and conduct thorough investigations to establish whether the allegations are supported by the evidence. False allegations of sexual misconduct can damage an employee's reputation. All personnel should act to prevent creating any perception of impropriety.

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# Workplace Considerations

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## Changing Dynamics

Many people may still think of sexual harassment as a male perpetrator doing something offensive to a female employee. However the dynamics of sexual harassment continue to change. There has been an increase in men making claims against women, as well as an increase in claims of same-sex harassment. Many of these have successfully held up in court.

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## **Power and Control**

Sexual harassment can occur between people of the same sex, even if sexual interest is not there. Increasingly, sexual harassment can also occur when a female employee harasses a male employee. In a case of sexual harassment, it's important to remember that the gender of both parties is irrelevant, and at its core, sexual harassment is really about power and control.

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## Who Harasses Whom?

Sexual harassment may involve a male harassing a female employee, a female employee harassing a male employee or same-sex harassment. Your prevention efforts should not focus exclusively on male-superior, female-subordinate relationships.

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## **Lasting Effects**

Sexual harassment is extremely serious and damaging. All employees are vulnerable including executives, managers and frontline workers. Ignoring offensive behaviors only perpetuates the problem – for you and others.

Sexual harassment negatively affects personnel, the institution as a whole and the community. Whether allegations are true or false, sexual harassment issues are a serious matter and can have lasting effects.



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## **Off-Premises Sexual Harassment**

Places where sexual harassment can occur include: Training sessions, conferences, parties and after-work happy hour events.

In fact, it may be even more likely to occur in situations like these because a person's defenses are often down in a different environment – and alcohol is often involved. Be on guard in your own behavior and be aware of the behavior of others to prevent any situation where harassment could occur.



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## Co-Worker Considerations

Keep in mind that coworkers who have not been directly involved in a sexual harassment situation can also be affected by feelings of disgust, fear, concern or even anger about witnessing or hearing about someone else being sexually harassed.

Indirect involvement as a witness to sexual misconduct can have an adverse effect on the work environment for other employees. And witnessing someone else being sexually harassed can be a form of harassment in and of itself. It also sends a signal that the institution does not take steps to prevent sexual harassment or to remedy it when it happens.

## Three Types of Relationships

There are three different types of relationships that can create the environment for a sexual harassment incident:

- the coworker – co-worker relationship
- the manager – subordinate relationship (and)
- the employee – non-employee relationship

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## Your Responsibility

In each of these situations, it is your responsibility as a manager or supervisor to set a good example. It is also your job to create a work environment that protects your employees from any sexual harassment from their co-workers, as well as from outside contractors. You must also ensure that independent contractors who enter your campus are protected against sexual harassment.

If you do not take steps to protect all of these individuals, you are risking personal liability as well as liability for your institution.



## **Workplace Example**

Suppose a female consultant visits your office and works closely with one of the male employees in your department. Every time he sees her, he tells her how sexy she looks and how much fun they'd have if they went on a date. The consultant is very troubled by this conduct and comes to you for help.

You must handle her complaint as you would handle the complaint of an employee.

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# Handling Complaints

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## Handling Complaints

Handling complaints and concerns is an important part of any manager's job. Sexual harassment complaints are no exception. By law, any institution is required to investigate the situation and take appropriate and timely corrective action. If you fail to do so, you may be exposing your employer to a long and financially draining legal battle.

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## **The Importance of a Policy**

Your institution must have a policy in place to follow if such a situation occurs. Also, you must take care to inform employees regarding the policy. Make sure that they know who to contact in your institution and have information about their right to contact the EEOC or U.S. Department of Education's Office for Civil Rights.

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## Offering Assurance

The first step you should take in the wake of a sexual harassment claim is to assure the complainant that your institution takes harassment claims seriously.

Let the complainant know that the complaint will be handled as quickly and discreetly as possible.

Be sure to inform the complainant that absolute confidentiality is not possible, but explain that the information will be released only on a strict need-to-know basis.

## **When a Complaint Is Filed**

Immediately report the complaint to the appropriate person in your institution. All complaints must be reported. And it's your job to get the complaint registered with the right person in your institution so that it can be taken care of in a timely and appropriate manner.

You must register all complaints, regardless of how serious you personally deem the allegations to be or how the complainant approaches you. In other words, the claims of a complainant who uses legal jargon should not be taken more seriously than the claims of any other complainant.



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## Investigation

The investigation of the complaint should begin within 24 hours after you receive it. The investigator must be a Human Resources professional or outside investigator.

Investigators must remain impartial and sensitive to the rights of all of the parties involved – including both the complainant and the alleged harasser. The investigator has an important responsibility to collect pertinent data from all parties involved.



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## **Prompt and Effective Action**

If the investigation yields data to support the claim of sexual harassment, the next step is to put a plan in place to stop the harassment from happening again and to resolve the issue with both parties. Taking prompt and effective action is crucial.

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## Retaliation

You must protect the complainant as they go through the process of resolution. Retaliation is a real concern for anyone who comes forward with a claim of sexual harassment. And you must ensure that no retaliation occurs to the complainant or to anyone who participates in the investigation. You must also inform the complainant and others that they should report any retaliation immediately.

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## Scenario 6

Here's another scenario. Sasha came to you yesterday and told you that her co-worker, Sam, is telling sexually explicit jokes and is constantly making sexual statements to her. Sam, who found out that Sasha went to you, no longer shares training materials with Sasha and tells others to do the same. Is this retaliation?

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## **Scenario 6 (cont.)**

This could be retaliation. Sam is taking adverse action against Sasha because she filed a complaint against him; he is also actively encouraging others to do the same. If you find out about such conduct, you must stop it immediately. No one should treat Sasha any differently because of her complaint.

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## Documentation

The final step to take in handling a sexual harassment claim is to document all information critical to the case. This means all conversations and interactions with parties involved, including facts found, actions taken and others. This will be critical in protecting your institution if the case should go to court.

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## **If You Are Accused**

If you, as a manager, are accused of sexual harassment, you must inform your higher-ups immediately. Just as in any other situation, an investigation should begin within 24 hours. During the course of the investigation, you should have no contact with the complainant.

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## Scenario 7

Anita is a manager. She receives a complaint from a new female employee that a veteran male supervisor is constantly telling dirty jokes to a group of younger female employees, including her.

She is fed up with it and feels that the jokes are negatively affecting her work. What is the first step Anita should take?

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## **Scenario 7 (cont.)**

The best approach would be for Anita to first assure the complainant that the allegations will be taken seriously, that the matter will be investigated promptly and that she will be protected against retaliation.

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# Consensual Relationships

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## Consensual Relationships

A much more complicated situation that may occur in the work environment is that of consensual relationships. Consensual relationships occur when two workers both “consent” to a romantic or intimate relationship. Often what begins as a professional working relationship can evolve into one that continues outside of work.

Consensual relationships are understandable, given that work situations often place employees in close proximity and in stressful situations. In such situations, it’s easy to understand how romantic and more intimate relationships can occur.

## Problems Can Arise

Remember that not all consensual work relationships can or should be considered sexual harassment. In fact, many healthy relationships have evolved from interactions at a place of employment.

However, problems can arise when a romantic relationship goes bad, or when coworkers are uncomfortable working in an environment where two people are behaving in a blatantly sexual way.

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## Supervisory Issues

These problems are further compounded when a manager or other person in authority is involved. Examples include:

- an employee later claiming they felt forced to get involved because of a superior's position of power (or)
- a superior's motives being questioned if the employee gets a negative job evaluation or is denied a pay raise or promised promotion



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## **Additional Problems**

In addition, other employees, who are not parties to the relationship, might argue that the employee in the relationship is receiving more favorable treatment from the supervisor than they are. So, if other employees feel that the only way to succeed in the institution is to get involved with the boss, that could turn into an actionable harassment claim.

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## **Consensual Relationships with Subordinates**

As a person in a position of authority over others, it's smart to avoid dating and romantic entanglements with coworkers. Also, institutions can have policies that prohibit a manager from directly supervising someone with whom that manager is intimately involved. Any harassment complaints made could fall under the umbrella of "hostile work environment" sexual harassment.

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## Scenario 8

Peter and Nick, unbeknownst to their co-workers in the office, have been dating outside of work. Peter recently decided to end the romantic relationship, but Nick's not handling it well. In fact, he continually calls Peter on the phone in the evenings, and he's chosen to stop taking the calls. Recently, Nick's started calling him at work. Is this sexual harassment?

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## Scenario 8 (cont.)

It could be. While the dating relationship is a somewhat common example of a consensual relationship between co-workers, it's also a common example of how consensual relationships can cause problems. Nick may now be contributing to a hostile work environment for Peter.

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## **Work Subordinates**

While policies can vary on how to address consensual relationships, as a person with supervisory responsibilities you should always avoid consensual relationships with any subordinates in your institution.

When a supervisor engages in a consensual relationship, it introduces a host of problems that sets the stage for sexual harassment allegations, as well as other forms of discrimination. Plus, it can have a toxic effect on morale for workers in the institution who are not involved in the relationship.



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# Preventing Harassment

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## Preventing Harassment

As a person with supervisory responsibilities, there are steps you can take to prevent sexual harassment from becoming an issue in your work environment. First, you need to recognize that harassment is a problem for you, your colleagues and staff, and your institution.

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## **Know Your Laws, Policies and Procedures**

Next, familiarize yourself with federal and state laws, as well as your employer's policies and procedures regarding sexual harassment and discrimination.

Bring the issue of harassment up at your staff meetings, voicing affirmation of employee rights and well-being, but also your strong disapproval of any sexual misconduct. It is a good idea at staff meetings to reinforce policy and procedures regarding harassment periodically.



## **Culture of Caring and Respect**

In addition to taking the measures previously mentioned, there are further steps you can take to help foster a culture of caring and respect where your staff feels safe in voicing concerns and complaints.

As a leader, you can take the first step to set a good example for others. Always be respectful of others and never exhibit inappropriate behavior in a learning and work environment.



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## **Be Approachable**

You can also create an atmosphere in which you and others in authority are approachable, and employees feel comfortable voicing their concerns.

Still, continuously monitoring behavior in your work environment is necessary, even when things are going well. You still have to be ready to respond if any questionable behavior occurs.

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## Prevention Strategies

According to the EEOC, “prevention is the best tool to eliminate sexual harassment in the workplace.” Employers should clearly communicate to employees that sexual harassment will not be tolerated.

They can do so by providing sexual harassment training to their employees and by establishing an effective complaint or grievance process and taking immediate and appropriate action when an employee complains.



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## Zero Tolerance

So, what are some strategies to prevent sexual harassment in the workplace? First, an employer should consider adopting a “zero tolerance” policy.

A zero tolerance anti-harassment policy is one that subjects an offender to discipline even for questionable conduct that would not be considered sexual harassment under the law.

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## Zero Tolerance Explained

As explained earlier, for a sexual harassment claim to be actionable under Title VII, conduct must be sufficiently severe or pervasive to "unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive working environment." So, one sexually explicit joke would not be likely to create an intimidating, offensive, or hostile environment. However, with a zero tolerance policy, telling even one sexually explicit joke could subject the joke-teller to discipline.

Adopting a zero tolerance policy helps illustrate that sexual conduct has no place at work and that all sexual misbehavior will be taken seriously and will be addressed immediately.

## **Anti-Harassment Policy**

Another way to prevent sexual harassment is to communicate and enforce a solid anti-harassment policy. Such a policy should clearly state what type of conduct is unacceptable and provide examples.

The policy should also explain what will happen if it is violated – specifically that the person violating it will be subject to discipline up to and including termination.



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## Important Policy Details

Next, the policy should describe the complaint procedure and provide a list of managers or supervisors that an employee can go to with a harassment complaint. Furthermore, the policy should discuss confidentiality and the protections available against retaliation.

Finally, the policy must provide the employee with information regarding how to contact the EEOC or the OCR. This policy should be disseminated and also posted in a visible location.



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## Documentation and Communication

It's important to remember that diligent documentation and good communication are effective preventive tools against employee misconduct. If an employee is accused of sexual harassment, your accurate records and documentation can protect you and your institution should the issue should go to court.

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## **Legal Defense Is Costly**

If sexual harassment claims are not properly addressed at the management level, complainants may consider or pursue legal remedies, such as administrative charges and lawsuits. Once the legal process has begun, your institution may have to expend significant time and resources on its defense.

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## Your Defense

If an alleged victim of sexual harassment files a lawsuit, evidence of your institution's sexual harassment policies and procedures will be critical to its defense. An employer may defend itself against a sexual harassment lawsuit by proving:

- that the institution had an effective policy and complaint procedure in place to address sexual harassment, which was communicated to all employees
- when a complaint was received (or the institution otherwise learned of alleged sexual harassment)
- (proving that) the complaint was investigated promptly and thoroughly (and/or proving that)
- the institution took immediate, appropriate, and effective corrective action to prevent the harassment from recurring, and made the complainant whole by restoring lost employment benefits or opportunities

Technology

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## Technology and Sexual Harassment

Tech and social media allow us to connect in endless ways. But as we might have experienced, there's always a catch.

It can be used to harass people either at or away from work. Regardless of *how* sexual harassment occurs, it's important to understand that sexual harassment laws and policies *still apply*. And that harassment can be either intentional or unintentional.

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## Email and Sexual Harassment

First, let's look at how email can play a role in sexual harassment.

For many of us, email might feel a little more private, more secure way of sharing information. And, in general, most emails are rarely viewed by anyone other than the sender and intended recipients.

But for every email that exists on an individual computer, there's also a backup copy of that email on a server.



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## Email Server Logs

Emails are generally kept on an ongoing basis as part of an email server log – even if the email on the computer is deleted.

Backup copies of email may be retained for long periods of time and in locations unknown to senders and recipients. You should always take this into consideration when using email.

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## Forwarding Sensitive Information

Because emails can be forwarded without your consent, you should always consider what might happen if your email gets forwarded to the wrong person – either accidentally or intentionally as a malicious act.

As a manager and supervisor, be particularly careful what you say about an employee, supervisor, vendor or outside contractor in an email. Email content can also be altered by someone who forwards the information. If something is especially confidential, go to great lengths to ensure that the information is confidentially transmitted. Email may not be the best forum for extremely sensitive information.



## **Jokes or Potentially Offensive Information**

With all the stresses of modern work life, humor can sometimes be a great stress reliever. But it's important that you exercise tremendous caution. If you send someone a joke or a meme, remind yourself that it can be forwarded or shared.

That's why it's critical always to be professional in your work communications. It doesn't mean that humor is out-of-bounds, but it does require that you use discretion and professionalism in any messages that you send.



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## Email and a Hostile Work Environment

One example of miscommunication that happens far too often is that of sexually-oriented humor. What's funny to one person may be highly offensive to another. An employee who receives sexually oriented jokes, memes or messages may construe the communication as contributing to a hostile work environment. As a manager or supervisor, you should exercise caution. A simple guideline is to just avoid forwarding any potentially offensive information through email.

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## **Cautious Professionalism on Email**

As a manager or supervisor, you represent your organization and bear greater responsibility than many of the individuals with whom you work.

If you notice a colleague who regularly sends messages or emails that can contribute to a hostile work environment, it might be smart to politely notify the individual that the messages create potential exposure for the individual and for the institution.

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## Email Stalking

While not common, sometimes one employee may stalk another via email or social media – sending excessive, repeated, unwanted messages of a personal nature.

Stalking can contribute to a hostile work environment even if the sender is trying to be nice or funny. Sexual harassment can be difficult to identify, but one of the conditions is that the behaviors are unwanted by the person who is being targeted.

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## Security and Email

As you deal with sexual harassment issues, you should also be aware of potential security risks. You don't want the names or details in a sexual harassment investigation to become available to others.

Your employer has probably gone to great lengths to ensure security. However, the security and confidentiality of your email cannot be guaranteed. Password protections are not foolproof. And it's also possible for other employees to mask their identity, which can add to security concerns.



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## **Your Employer's Intellectual Property**

You should be aware that your work-related email from your work address in all likelihood belongs to your employer. Your employer may access or disclose email under specified circumstances as described in your institution's email or acceptable use policy.

IT staff who work with email may even inadvertently see the contents of email messages in the course of their duties. So always keep this in mind as you correspond with colleagues about sensitive and confidential matters.



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## **Your Employer's Policy**

Employers often establish policies that relate to proper email use. These are sometimes referred to as “acceptable use policies.” Regardless of what it’s called, make a point to read and understand your employer’s policy on email.

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## Email Best Practices

As you email with others, keep the following best practices in mind:

- Always think twice before hitting “send” - especially if a message’s content may be interpreted (or misinterpreted) as harassment.
- Remember that emails lack verbal and nonverbal signals that help recipients understand the messages that we would otherwise convey if we spoke directly to the person.
- Humor – including words, images, memes and videos – may be viewed as harassment by some recipients. Carefully consider how others may view the content of a “humorous” email before sending the message.

## Email Best Practices (cont.)

*As you email with others, keep the following best practices in mind:*

- Always respect the privacy of others.
- Use your institution's email system only on matters relating to work. Use a separate, personal email account on matters that are unrelated to your job.
- Use professionalism and courtesy in your email exchanges. (and)
- Always comply with your institution's email policy.



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## **Social Media**

While staff members often have email accounts at work, social media is often not work-related. That doesn't mean, that smartphones, tablets and other devices aren't everywhere.

As a result, the opportunity to engage in sexual harassment exists everywhere, as well.

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## **Social Media and Sexual Harassment**

Simply said – the same laws and institutional policies still apply to both social media and sexual harassment. Whether an employee is targeted for sexual harassment in person or not, sexual harassment is illegal. This applies to any form of communication used to transmit the harassing messages including text messaging, social media, memes, shared images, and other.

Sexual harassment does not have to originate at work in order to be considered sexual harassment. Harassment that originates away from work can be every bit as devastating to your institution's work environment.



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## Rules

Your institution may or may not have explicit rules regarding social media use at work or between co-workers. Employees are responsible for knowing whether these rules exist as a term of their employment – and to carefully observe their institution’s policies.

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## Social Media Best Practices

The following are some best practices that will help protect you, your co-workers and your institution from sexual harassment dangers.

- Remember that – just as with email – social media content can be saved. Just because you “delete” something doesn’t mean that it is gone.
- Think twice before transmitting something that may be perceived as inappropriate.
- Text, images and video delivered via social media can be misinterpreted or misunderstood. Be careful of offensive humor, language and/or sexual references in communications involving co-workers or students. (and)
- If you feel social media has been used to sexually harass you – or a student – save the messages and carefully follow your institution’s reporting procedure.

# Conclusion

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## Summary and Implications

Throughout this course we've covered a substantial amount of material, all of which relates to sexual harassment. The goal is to make sure that, as a person with supervisory responsibilities, you are familiar with all facets of sexual harassment prevention in the work environment.

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## Summary and Implications (cont.)

- Sexual harassment is a form of discrimination, which is illegal under state and federal laws.
- Two of the key elements of sexual harassment are that (a) the action is unwelcome and (b) the action is of a sexual nature.
- All situations are unique, and proper investigations must be conducted with that assumption. (and)
- If a violation occurs, the employer and the harasser could be obligated to pay damages.



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## Summary and Implications (cont.)

- Two types of sexual harassment behavior found in the work environment are “Quid Pro Quo” (this for that) and “Hostile Work Environment” (a severe incident or persistent pattern of unwelcome sexual conduct that changes the conditions of a person’s work environment or academic success).
- As a person with supervisory responsibilities, when you become aware of problematic behaviors occurring in your work environment, it's important to promptly address the behavior to prevent it from recurring and ensure that all staff members understand that such conduct will not be tolerated. (and)
- A victim of sexual harassment is not required to tell the harasser to stop or that the behavior makes them feel uncomfortable.

## Summary and Implications (cont.)

- “Quid pro quo” sexual harassment occurs when one person in authority offers to give or withhold an employment decision or benefit based on another person’s response to a sexual advance.
- “Quid pro quo” sexual harassment can occur at any level of an organization, and to any employee. Male-female, female-male and same-sex harassment are all possible and should be treated alike. (and)
- A person who experiences “quid pro quo” sexual harassment should inform their supervisor or manager of the problem, so that a thorough and fair investigation can take place.



## Summary and Implications (cont.)

- A hostile work environment is created when severe sexual misconduct or a persistent pattern of sexual aggressiveness interferes with a person's work environment.
- Not taking action to address behaviors that contribute to a hostile work environment involves risks and negative consequences. (and)
- Appropriate corrective actions and responses will help remedy the situation.



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## Summary and Implications (cont.)

- Sexual harassment is really about power and control.
- Sexual harassment can occur at work-related off-campus events that are off-premises, like conventions and after-work happy hour events.
- People who are not directly involved in a sexual harassment situation can still be negatively affected by such behaviors. (and)
- As a manager or supervisor, if you do not take steps to protect everyone in your workplace environment against sexual harassment, you are risking personal liability as well as liability for your employer.



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## Summary and Implications (cont.)

- You should document all information that is related to a sexual harassment claim. This data can be critical in protecting your institution if the case should go to court. (and)
- Assure all complainants that the matter will be handled promptly and that they will be protected against retaliation.

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## Summary and Implications (cont.)

- Consensual work relationships should not be considered sexual harassment, but problems can arise when a relationship goes bad or if the relationship makes others uncomfortable.
- Work relationships are even more complicated when a manager or other person in authority is involved. (and)
- Employers can create policies that prohibit a manager from directly supervising someone with whom that manager is intimately involved.



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## Summary and Implications (cont.)

- The first step in preventing sexual harassment is to recognize that harassment is a problem.
- Be familiar with federal and state laws regarding harassment and discrimination, and be sure to discuss harassment at staff meetings.
- Make sure people are comfortable approaching you with sexual harassment claims.
- Documentation and communication help prevent employee misconduct and protect you and your organization against liability.
- Zero tolerance policies ensure that misconduct never becomes severe and illustrate that sexual conduct has no place at work and that all sexual misconduct will be taken seriously and will be addressed immediately. (and)
- Any policy regarding sexual harassment should clearly state and define prohibited conduct that is unacceptable, and explain the complaint or grievance procedure and potential consequences if a violation occurs.

## Summary and Implications (cont.)

- Technology can be used to sexually harass another person in the work environment.
- Use caution and discretion when using email and messaging.
- Recognize that social media that is misused at work – or away from work – can violate sexual harassment laws as well as your institution's policies. (and)
- Follow your institution's policy for acceptable email and technology use.

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