

Harassment in the Workplace: It's Against the Law

What is Harassment?

Harassment is behavior which has the effect of humiliating, intimidating, or coercing someone through personal attack. It is behavior that will make someone uncomfortable or embarrassed, and cause emotional distress. It frequently occurs when one person wants to exert power or control over another person.

Harassment may be intentional with a person targeted personally, or it may be unintentional. What matters is how the person receiving the behavior perceives it to be.

While harassment because of sex gets the most attention, harassment because of other protected characteristics such as race, national origin, sexual orientation, gender identity, religion, age or physical and mental disability is also prohibited under state and federal laws. Harassment because of marital status or appearance may also be illegal, depending on jurisdiction; it is always disrespectful and inappropriate workplace behavior.

The Laws that Prohibit Harassment

Title VII of the federal Civil Rights Act of 1964 prohibits discrimination in the workplace because of race, color, sex, religion, and national origin. Other federal laws prohibit discrimination because of age or disability. Harassment is a form of discrimination covered under these laws.

The Equal Employment Opportunity Commission (EEOC) has issued guidelines on sexual harassment in employment which provide the legal definition of harassing behavior and which set forth the standards followed by enforcement agencies and the courts in handling charges of sexual harassment. The definition's framework can also be applied to harassment for other reasons.

The Iowa Civil Rights Act of 1965, *Iowa Code* Chapter 216, also prohibits employment discrimination because of race, sex, sexual orientation, gender identity, religion, creed, national origin, age, color, or disability. Harassment is considered to be a form of prohibited discrimination. The state goes beyond Title VII by also prohibiting discrimination in the areas of housing, public accommodations, credit and education.

In addition, many cities have human rights/civil rights ordinances that prohibit discrimination in the workplace.

Sexual Harassment: What It Is and What It Isn't

The EEOC Guidelines define sexual harassment as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature, when:

- submission to such conduct is made an implicit or explicit condition of an individual's employment;
- submission to or rejection of such conduct affects employment opportunities; or
- such conduct interferes with an employee's work or creates an intimidating, hostile, or offensive work environment.

The key phrases in the EEOC definition of sexual harassment are "unwelcome" and "of a sexual nature." The behavior must be unsolicited and unwelcomed by the victim. The phrase "of a sexual nature" means that sex or gender must be the underlying nature of the behavior. Men and women may have disputes or disagreements on the job, but this would not be viewed as harassment unless there is a sexual element to the interaction.

This definition does not prohibit the usual social interaction, which sometimes is of a sexual nature, among people who work together. People can get acquainted, joke together, or ask for a date as long as that is welcomed by the parties involved. Welcome behavior or consensual contacts of a sexual nature are not harassment.

There are two types of harassment: that which results in a tangible employment action and that which creates an unlawful hostile environment but does not result in a tangible employment action. An employer is always liable for a supervisor's harassment if it results in a tangible employment action. If it does not involve a tangible employment action, however, the employer may be able to avoid liability or limit damages by establishing that it exercised reasonable care to prevent and correct promptly any harassing behavior and that the employee unreasonably failed to utilize the preventive or corrective opportunities provided by the employer.

Harassment involves a tangible employment action if it results in a significant change in employment status based on the employee's responses to unwelcome sexual demands. Examples of tangible employment actions include hiring and firing, promotion and failure to promote, demotion, compensation decisions and work assignments.

The employer is liable for supervisor harassment because supervisors are aided in their misconduct by the authority that the employers have delegated to them, such as the authority to undertake or recommend tangible employment decisions, or to direct the employee's daily work activities.

With respect to conduct between co-workers, an employer is responsible for acts of sexual harassment in the workplace where the employer knew or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

Examples of Harassing Conduct

Specifically, what types of actions, if not welcomed by the recipient of the behavior, could be viewed as harassment? Inappropriate actions break down into four types of behavior:

1. **Physical:** touching in a sexual manner, pinching, patting, rubbing up against, gestures, assault.
2. **Verbal:** jokes of a racial, ethnic, or sexual nature; comments or questions about a person's body, dress, or personal life, using demeaning or inappropriate terms; using crude and offensive language of a sexual nature; name-calling or racial or ethnic slurs; demeaning comments about age, disability, or sexual orientation.
3. **Visual:** cartoons, drawings, or caricatures of a racial, ethnic, or sexual nature; pin-up pictures or calendars; displaying sexual objects in the workplace. Electronic messages or e-mail are frequently used for inappropriate personal messages, or to distribute jokes and cartoons that are offensive. Even after these messages are deleted on the computer, they may be retrieved to use as evidence of harassment.
4. **Hazing:** teasing, practical jokes of a sexual, racial or ethnic nature, ostracizing, starting or spreading rumors about a person's personal life or sexual activities.

In determining if your own conduct might be unwelcome to others, consider these questions: "Would my behavior change if someone from my family was present?" "Would I want my spouse or child to be treated this way?"

What to Do If It Happens to You

If harassment happens to you, there are actions you can take to stop the harassment and initiate action against the harasser. Do not feel powerless.

- Know your rights, including your company's policy prohibiting harassment and its internal grievance procedure. Know to whom in your company you can report the problem. Know what other actions are available to you under the law.
- Tell the harasser that the behavior is neither welcome nor humorous. This can be done in person, or in writing, if necessary. Be firm and assertive in doing so. Sometimes people send mixed messages by trying to be too nice when saying "no." Be specific in what you want the harasser to do, such as "Please do not touch me again," or "Please do not make those personal comments to me."
- If the offensive behavior continues, report it to your supervisor, manager, or personnel administrator. The employer may not be liable unless they knew or should have known that the harassment was taking place. If the harasser is the owner of the business, you may need to go directly to an outside enforcement agency.

Recent U.S. Supreme Court decisions have stressed the need for complainants to report the harassment to management, take advantage of the

provisions of the employer's policy prohibiting harassment, and otherwise try to stop the harassment.

- Keep a written record or diary of the offensive behavior, documenting as precisely as possible what happened; when and where it took place; the names of witnesses, if any; your response; and any other information that may be helpful later. This documentation will be extremely helpful during an investigation, whether it be an internal investigation or one done by an outside agency.
- Keep copies of all your employment records such as attendance and evaluations. Sometimes a harasser/supervisor will attempt to alter records to discredit you.
- Try to find out whether other employees have also been harassed, and whether they could offer confirming testimony. There's strength and support in knowing that you're not the only one that it has happened to.
- If you have been physically or sexually abused you can take action by filing criminal charges against the person who abused you.
- Don't blame yourself for someone else's behavior. You did not cause the harassment.
- Be aware that retaliation by the employer for a person having filed a complaint or participated in an investigation is also prohibited by law.
- If your initial attempts to resolve the situation are not successful or if the harassment is ongoing and severe, don't be afraid to ask for help. Consider filing a formal complaint with a city, state (Iowa Civil Rights Commission) or federal agency (EEOC). Keep in mind that the complaint must be filed with the Iowa Civil Rights Commission within **300 days** of the latest incident of discrimination.
- Harassment, and especially sexual abuse, may cause on-going emotional stress. Seek medical care or psychological counseling if needed.

An inevitable question that arises is, "Why do employees put up with harassment and delay reporting or fail to report it to the employer?" The major reason why people do not speak out is fear: fear of loss of the job or repercussions on the job; fear that the complaint will not be taken seriously, or that they will not be believed. Not being considered a team player or being accused of not having a sense of humor or not getting along with the work group are other frequent fears.

Another criticism that can happen to women is the accusation that somehow they "asked for it" by their manner of dress or behavior. No one "asks for" harassment. The victim does not create the problem; the harasser's behavior creates the problem.

What Employers Need to Know About Harassment

The Costs of Harassment

Harassment is expensive. A harassing atmosphere at work will cause low employee morale and high turnover. Low morale usually translates to low production or poor quality work. Many times a victim of harassment will simply quit and leave a job rather than have a confrontation about it. This costs money for the employer to hire and train new workers.

There are costs involved if a harassment complaint is filed internally with the employer, i.e., staff time needed to investigate and resolve the complaint. If a complaint is filed with an enforcement agency, there will be additional costs for staff time and legal counsel to respond to the complaint.

If there is an adverse decision from the enforcement agency or a court, the employer may have to pay damages for lost pay or emotional distress. If a charge of harassment becomes public knowledge, a business could suffer a loss of customers and public good will.

Employer Liability

When a determination has been made that harassment did occur in the workplace, the following liability standards apply:

- Harassment by a supervisor or manager involving a “tangible job action”: the employer is always liable. A “tangible job action” includes such things as hiring, firing, failure to promote, loss of raise, etc.

Harassment by a supervisor or manager involving hostile environment: employer is liable unless the employer proves that they exercised reasonable care to prevent and remedy any harassing behavior, and that the complainant failed to take advantage of preventive or corrective measures or otherwise avoid harm.

- Harassment by a supervisor or manager: the harasser may be individually liable, as well as the employer.

- Harassment by a co-worker, non-employee or other outside person: the employer is liable if the employer knew or should have known about the harassment and did not take prompt remedial action.

- Co-workers may also be individually liable for damages caused by harassment.

Owners, managers and supervisors need to be aware of the provisions of the laws prohibiting harassment in order to handle problems if and when they occur.

What Employers Need to Do to Prevent Harassment

Recent U.S. Supreme Court decisions have made it imperative that employers have a policy prohibiting harassment, that they communicate that policy to all

employees, that they have an effective complaint procedure, and that they take prompt, effective action once harassment is reported.

The EEOC Guidelines also speak to the need for the employer to take active steps to prevent harassment before it occurs. EEOC suggests affirmatively raising the subject, making known that it is not acceptable in the workplace, and developing methods for training staff and handling complaints.

Specific actions employers can take include the following:

- Don't deny that harassment could happen in your workplace. Be alert to what is happening among employees, and be ready to remind persons of appropriate behavior. Never ignore inappropriate behavior. Take immediate action even if it seems to be a minor incident. Ignoring the behavior makes it appear that you condone the behavior.

- Be sure that your own actions set an example of appropriate, business-like conduct. Even if you, as an owner or manager, do not harass, looking the other way when it occurs appears to give it your stamp of approval.

- Have a written policy prohibiting harassment in your workplace. The policy should define prohibited behavior, inform employees of whom to contact with a sexual harassment complaint, and spell out disciplinary actions for those who violate the policy. Communicate this policy to all employees individually and post throughout the workplace. Enforce the policy; don't let it be just another “piece of paper.”

- Be aware of the liability incurred by the employer for the actions of managers and supervisors, co-workers, and non-employees.

- Include harassment awareness as part of orientation and training of new employees, particularly supervisory and management staff.

What Employers Need To Do When A Harassment Complaint is Filed

Once an incident of harassment has been made known to the employer, the employer must take prompt investigative action. This is key to an employer's defense, and may lessen or cancel their liability if the matter comes to litigation. The employer should have a plan or specific procedure in place for dealing with complaints. Points to consider include:

- Take any complaint seriously, and inform the complainant that you will take **prompt** action to investigate the matter. Do not brush off the allegations with protests that it couldn't possibly be true.

- Designate and train the persons who are to receive complaints. If possible, more than one should be trained, including at least one female. Since most victims of sexual harassment are female, they may feel reluctant to discuss the situation with a male manager. In situations where there might be a conflict of interest or an appearance that an unbiased decision is not possible, the employer may want to employ an independent investigator.

Conducting the Internal Investigation

- Interview the complainant in detail about the allegations: who did the harassing; exactly what was said or done; how the complainant reacted or responded; where the harassment took place; names of any witnesses; and whether the incident was an isolated event or part of a pattern.

- Assure the complainant that the matter will be kept as confidential as possible. Absolute confidentiality may not be possible if detailed or specific questions must be asked of witnesses. Persons interviewed during the investigation should be requested not to discuss the matter with other employees.

- In some severe situations, the parties may need to be immediately separated by making a job transfer or placing the complainant on paid leave. Be careful that any changes made to the complainant's work situation are not adverse and do not appear to be retaliatory.

- Inform the alleged harasser of the charge and give that person an opportunity to respond to each allegation in detail.

- Interview named witnesses, other persons in the work group, or other persons supervised by the alleged harasser for any corroborating evidence.

- Make a determination as to the truth of the claim. Consider the credibility of each party, their possible motives for their allegations or responses, and the observations of other employees.

- If evidence supports the charges, take prompt action against the harasser according to company disciplinary policies. The remedial action could be counseling or training, verbal warning, written warning, suspension, or discharge. Take into account the seriousness of the behavior, whether it was a first offense, and the harasser's past disciplinary record.

Keep the complainant informed of the completion of the investigation and what action was taken.

- Be aware that retaliation against a person for filing a complaint or participating in an investigation is prohibited by law.

- Be aware of the need for healing in the workplace. The parties have suffered emotionally from the situation. Action may be needed to stem rumors or stories that have spread. Discipline or firing of a popular supervisor may upset employees, especially when the circumstances are not fully known, and cannot be fully explained because of confidentiality. Even if the harassment allegations are found to be unsupported, human relations intervention may be necessary to repair damaged working relationships.

- If a complaint is filed with an enforcement agency, respond promptly and fully to their requests for information. You may wish to consult legal counsel.

Sometimes questions are raised about persons making false accusations or frivolous complaints. The person who files a harassment complaint has much to risk, personally and professionally, by coming forward. It would be rare for a person to take these risks by making a false

accusation. This does not mean that every charge of harassment will be upheld, but it means that in the victim's perception there was a problem they believed to be harassment. All persons have the right to a workplace free of harassment, and have a right to report behavior that they believe is discriminatory.

In summary, harassment is a problem that can have serious economic and intangible effects for both the victim and the accused harasser/employer. Only a concerted effort by employees and employers to know about harassment and to stop inappropriate behavior in the workplace will help to solve the problem.

If you believe you may have been treated unfairly in the areas of employment, housing, education, credit or public accommodations, call:

IOWA CIVIL RIGHTS COMMISSION

Grimes State Office Building

400 E. 14th Street

Des Moines, IA 50319

(515) 281-4121, (800) 457-4416

FAX: 515-242-5840

<https://icrc.iowa.gov/>

The Commission also provides educational materials on civil rights and discrimination, and has a video lending library. For a list of the publications and videos, visit our webpage, or call the office.

Staff members are available to make presentations on a variety of topics, including preventing harassment or conducting an internal investigation. Contact the office to make arrangements for a program or speaker.

For additional information on harassment, you may contact any of these state agencies:

OFFICE ON THE STATUS OF WOMEN

(515) 281-4461, (800) 558 4427

E-mail: women@iowa.gov

Web site: <https://humanrights.iowa.gov/cas/icsw>

OFFICE ON STATUS OF AFRICAN AMERICANS

(515) 281-3855

OFFICE OF LATINO AFFAIRS

(515) 281-4080

OFFICE OF PERSONS WITH DISABILITIES

(515) 242-6182

The mailing address for these agencies is:

%Iowa Department of Human Rights

Lucas State Office Building

Des Moines, Iowa 50319

FAX: (515) 242-6119