



SEXUAL HARASSMENT IN THE WORKPLACE

Individuals who are subject to sexual harassment in the workplace may have a *civil* (not criminal) legal cause of action against their employers under federal, state, and sometimes local law. This fact sheet outlines only sexual harassment in the workplace and provides resources – note that sexual harassment can also in the education, housing and public services fields and these may also be actionable offenses.

Types of sexual harassment under federal law:

2 types:

- Peer/Coworker

- Peer or Coworker Harassment: In order to succeed with a claim for sexual harassment under this category, a person (the “plaintiff”) must prove that: (1) they belong to a protected class; (2) they were subject to unwelcome sexual harassment; (3) the harassment was based on sex; (4) that the harassment affected a term, condition, or privilege of employment; and (5) that the employer knew or should have known of the harassment and failed to take proper remedial action.

Breaking it down, what does each prong mean?

- 1) **Gender** is a protected class, so women plaintiffs per se meet this prong. (Men have been able to bring claims for sexual harassment, but the courts have varied the methods they use in analyzing harassment claims made by men.)
- 2) **“Unwelcome sexual harassment”** includes sexual contact, sexual assault or advances. **Sexual harassment** can also include sexual jokes or sexually charged language or activities if the action is repeated, severe and pervasive enough to create a hostile work environment for an employee. Generally, the more outrageous or offensive the language or conduct the less often it needs to occur. Courts have held sexual conduct is **“unwelcome”** if the employee did not solicit or incite it, and the employee regarded the conduct as undesirable or offensive. The court will look at it from the perspective of the complainant, as well as what a “reasonable person” would deem harassing.
- 3) **“Based on sex”** means that the harassment occurred because of the person’s gender.
- 4) In determining whether the harassment **affected a person’s employment**, courts look at a number of things including the “nature, frequency, intensity, location, context and object or target” of the conduct.
- 5) An employee must be able to show evidence that someone at a management level in the company either **knew** about the conduct and did nothing, **or should have known** about the conduct.

-Supervisor

- Supervisor Harassment: If an employee is subject to sexual harassment **by her supervisor**, an employer can be held liable if the employee can prove numbers one through four, outlined above. If the person doing the harassing is the supervisor, the employee need *not* prove number five above – that anyone else at the company had or should have had any knowledge of the harassment. In these cases, the employer may be able to defend itself by showing it had anti-harassment policies in place and provided training to employees, including the specific supervisor. Employers can also defend by proving the plaintiff failed to follow procedures to alert the company of the conduct or report the conduct.

Harassment under state law:

The Minnesota Human Rights Act (MHRA)

- Minn. Stat. §363A.03, subd. 43 defines sexual harassment as follows:
- “Sexual harassment” includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct or communication of a sexual nature when: (1) submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, education or housing; (2) submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual’s employment, public accommodations or public services, education or housing; or (3) that conduct or communication has the purpose or effect of substantially interfering with an individual’s employment, public accommodations or public services, education or housing or creating an intimidating, hostile or offensive employment, public accommodations, public services, educational or housing environment.
- Although there are some legal differences between cases arising under the MHRA and federal law, generally lawyers and courts will use the same standards and methods of proof from both state and federal cases. Employer liability under Minnesota law is somewhat unclear based on a comparison of the state and federal laws, but many legal experts have suggested recent legislative changes show intent by the legislature that Minnesota follow the same analysis in determining employer liability as in federal law discussed above. **While federal law does not prohibit discrimination based on sexual orientation, it is a violation of Minnesota law.**

Administrative Agencies and Resources

The following agencies investigate claims of sexual harassment/discrimination and in some cases sue on behalf of the victim.

- **Minnesota Department of Human Rights (MDHR)** – for claims of harassment or discrimination of any kind – workplace, housing, education, etc. in the state of Minnesota. The MDHR website also provides substantial information with respect to discrimination and harassment: www.humanrights.state.mn.us or call (651) 296-5663, (800) 657-3704, TTY: (651) 296-1283.
- **Equal Employment Opportunity Commission (EEOC)** – for employment claims; federal agency. Charges of discrimination are filed with the nearest local field office. In Minnesota:
 - Minneapolis office Towle Building, 330 South Second Avenue, Suite 720, Minneapolis MN 55401-2224; call (612) 335-4040 or (800) 669-4000; for TTY call (612) 335-4045 or (800) 669-6820. www.eeoc.gov
- **Office of Fair Housing and Equal Opportunity Department of Housing and Urban Development** – Federal agency for housing claims; claims can be filed online at www.hud.gov/complaints/housediscrim.cfm or by contacting the local office: Minneapolis Field Office, International Centre, 920 Second Avenue South, Suite 1300, Minneapolis, MN 55402; call (612) 370-3000 or fax (612) 370-3220
- **Note that some cities have offices where complaints for violations under city ordinances can be filed** – these include the Minneapolis Department of Civil Rights, 250 South Fourth Street, Suite B15, Minneapolis, MN 55415, call (612) 673-3012 or (612) 673-2599. www.ci.minneapolis.mn.us/civil-rights; and the Human Rights Division of the Department of Human Rights and Equal Employment Opportunity in St. Paul, 240 City Hall, 15 W. Kellogg Blvd., St. Paul, MN 55102, call (651) 266-8966. Check your local jurisdiction.

Q&A

What should I do if I believe I am being sexually harassed at work?

What do I have to gain from civil litigation for sexual harassment?

I reported sexual harassment and was disciplined or terminated.

My former employer harassed me – how long do I have to sue for sexual harassment?

- If your company has an office policy or procedure directed for how to report sexual harassment, you should follow the reporting procedures in it. Following administrative procedures may help address the problem or help the stage for further actions if the problem does not stop
- You have the right to work in an atmosphere free of harassment, and whoever is harassing you should stop doing so. However, when and whether to leave a job for your own physical and emotional health is a personal choice. Always consider seeking the advice of an attorney before making any decisions with respect to leaving a job.
- As with any kind of civil litigation, sexual harassment cases are generally limited to monetary recovery. However, settlement negotiations in such cases do sometimes result in provisions for employer-provided education to current employees, non-disparagement of the victim or plaintiff by the company, or similar provisions. In general, damages in a sexual harassment case are emotional distress damages that are very difficult to quantify. Settlements and awards are extremely varied and case-dependent.
- Retaliation for complaining is a cause of action (or basis for a lawsuit) separate from sexual harassment itself. Even if you don't have a claim of sexual harassment, you may have a legal claim for retaliation and should seek legal advice. The most obvious form of retaliation is termination, but it also can include subtle discipline, demotions, pay cuts, removal of work, etc.
- The short answer depends on a number of factors, but the time frame may be as short as one year after the sexual harassment actually occurred. If sexual harassment has occurred, there may have been other related conduct by the company that was also illegal and is subject to different statutes of limitations.
- Filing a claim with an administrative agency (like the ones listed above) will usually toll (stop) the time frame from running until the agency has completed its investigation. However, as soon as the investigation is completed there will be a very short amount of time in which to proceed with a legal claim and legal assistance must be sought immediately.

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