



## 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 sexual harassment and gives resources.\*

### 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.**" Sexual contact, assault or advances are generally deemed to be "**sexual harassment.**" "**Sexual harassment**" can also be 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 a supervisor, the employee need *not* prove number (5) 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

<p><b>Harassment under State Law:</b></p> <p><b>The Minnesota Human Rights Act</b></p>	<p>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.</p> <ul style="list-style-type: none"> <li>• Minn. Stat. § 363A.03 Subd. 43 defines sexual harassment as follows:</li> <li>• "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.</li> <li>• 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 for 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 an intent by the legislature that Minnesota follow the same analysis in determining employer liability as in federal law discussed above. <b>While sexual orientation discrimination is not prohibited by federal law, it is a violation of Minnesota law.</b></li> </ul>
<p><b>Administrative Agencies and resources</b></p>	<p><b>The following agencies investigate claims of sexual harassment/discrimination and in some cases sue on behalf of the victim.</b></p> <ul style="list-style-type: none"> <li>• <b>Minnesota Department of Human Rights ("MDHR")</b> – 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. <a href="http://www.humanrights.state.mn.us">www.humanrights.state.mn.us</a> 651-296-5663, 1-800-657-3704, TTY: 651-296-1283</li> <li>• <b>Equal Employment Opportunity Commission ("EEOC")</b> – 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 430 Minneapolis, MN 55401-2224. 612-335-4040 or 1-800-669-4000 612-335-4045 (TTY) or 1-800-669-6820 (TTY) <a href="http://www.eeoc.gov">www.eeoc.gov</a></li> <li>• <b>Office of Fair Housing and Equal Opportunity Department of Housing and Urban Development</b> – Federal agency for housing claims; claims can be filed online at website or by contacting the local office: Fair Housing Hub U.S. Department of Housing and Urban Development</li> </ul>

Ralph H. Metcalfe Federal Building  
77 West Jackson Boulevard, Room 2101  
Chicago, Illinois 60604-3507  
(312) 353-7776 ext. 2453; 1-800-765-9372; TTY (312) 353-7143 [www.hud.gov/complaints/housediscrim.cfm](http://www.hud.gov/complaints/housediscrim.cfm)

## Q and A

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

- If your company has an office policy or procedure directed for how to report sexual harassment, you should follow the reporting procedures in it.
- You have a right to work in an atmosphere free of harassment, and they should quit harassing you. 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.

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

- 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 other similar provisions. Generally damages in a sexual harassment case are emotional distress damages which are very difficult to quantify. Settlements and awards are extremely varied and case-dependent.

**I reported sexual harassment and was disciplined or terminated?**

- 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.

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

- The answer depends on a number of factors, but the timeframe 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 statute 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.

**Sexual Violence Justice Institute  
Minnesota Coalition Against Sexual Assault  
161 St. Anthony Avenue, Suite 1001  
St. Paul, MN 55103  
651.209.9993 or 800.964.8847**

\*Because sexual harassment is most commonly encountered and discussed in the context of the workplace, this fact sheet focuses mainly on the employment relationship. However, please note that sexual harassment occurring in the education, housing or public services contexts may also be actionable.

\*\* Our thanks to Leondra Hanson, an attorney and a member of the Board of Directors of the Minnesota Coalition Against Sexual Assault.