



SEXUAL HARASSMENT FACT, FICTION & PREVENTION (Part I)

This continuing dispatch education article is part one of a two part series dealing with sexual harassment in the work place. As with all APCO Institute continuing dispatch education articles, this material is intended to provide information regarding the subject matter covered. It is provided with the understanding that the author is not engaged in rendering legal advice. If legal advice or assistance is required, a competent professional in your area should be consulted.

Sexual Harassment Background - The Reality:

On the job sexual harassment is not a recent problem, although legal liability for it is relatively new. The results of various private industry as well as Federal Government surveys completed during the 1980's indicated that a significant number of female employees (40%-90%) and 15% of male employees felt they had been subjected to unwanted sexual harassment or advances at work. In these surveys there was also a finding that a significant number of these incidents went unreported. More recent studies have indicated that these numbers have not changed and that a very high percentage of incidents of sexual harassment continue to go unreported. Some of these same studies have indicated that up to 95% of such incidents may not be reported.

In the American courts the first case addressing the issue of discriminatory work environment was tried in the late 1960's. However, public recognition of the issue appears to only have been brought about by or during the Senate Judiciary Committee hearings regarding the nomination of Clarence Thomas to the U.S. Supreme Court. Sexual harassment cases filed with the EEOC jumped 50% over the previous year following the Clarence Thomas hearings and the enactment of the 1991 Amendment to the Civil Rights Act of 1964 allowing compensatory damages for violation of the law.

Sexual Harassment Background - The Law:

The primary underlying basis for claims involving sexual harassment issues comes from the Civil Rights Act of 1964 and the later amendments to this law. Title VII of the Civil Rights Act of 1964 makes it "*an unlawful employment practice for an employer ... to discriminate against any individual with respect to his compensation,*

terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin."

As previously noted, the Civil Rights Act of 1964 was amended in 1991. Prior to this amendment sexual harassment victims could collect only back pay, lost wages and if they had been forced to leave their employment, reinstatement to their jobs. After enactment of this Amendment sexual harassment victims may recover compensatory damages beyond back pay and are allowed to present their cases in a jury trial.

Damages in such cases can encompass "future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non pecuniary losses." Plaintiffs can also collect punitive damages, if they can demonstrate that an employer acted with malice or with reckless or callous indifference. The law does, however, limit the amount of damages based on the number of employees employed.

In 1980 The Equal Employment Opportunity Commission (EEOC) issued Guidelines stating that "sexual harassment" is a form of sexual discrimination and therefore prohibited by Title VII of the Civil Rights Act of 1964. The definition of "sexual harassment" in this EEOC publication indicated that only "*unwelcome sexual conduct that is a term or condition of employment constitutes a violation of the law*"

In addition these Guidelines set out two types of "sexual harassment" that have implications for employers:

- Quid pro quo harassment; and
- Hostile environment harassment

"Quid Pro Quo harassment" occurs when submission to or rejection of "unwelcome" sexual advances or conduct of a sexual nature is used as the basis for employment decisions affecting the individual or the individual's submission to such conduct is made a term or condition of employment.

In addressing Quid Pro Quo harassment claims, the courts have followed the legal theory of ***respondeat superior*** in which the company/organization is held strictly liable even if it had no knowledge of the conduct.

"In that case, the supervisor uses the means furnished to him by the employer to accomplish the prohibited purpose. He acts within the scope of his actual or apparent authority to "hire, fire, discipline or promote." Henson v. City of Dundee 1982

"Hostile Environment harassment" occurs when "unwelcome" sexual conduct unreasonably interferes with an individual's job performance or creates a hostile, intimidating or offensive work environment even though the harassment may not result in tangible or economic consequences, that is, the person may not lose pay or a promotion.

Some of the courts which first addressed hostile environment harassment claims stated that it arises when a co-worker or supervisor, engaging in unwelcome and inappropriate sexually based behavior, renders the workplace atmosphere intimidating, hostile, or offensive.

The U.S. Supreme Court in the case of *Meritor Savings Bank v. Vinson* endorsed this notion of a hostile work environment in 1986. In this case, the Court gave the EEOC Guidelines clear recognition and followed its approaches closely.

In summary, the court in Meritor held that sexual harassment is actionable when the harassment is sufficiently severe or pervasive so as "*to alter the conditions of (a victim's) employment and create an abusive working environment*". It also held that sexual misconduct constitutes prohibited sexual harassment, even if it is not linked directly to the grant or denial of an economic quid pro quo, where "*such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.*"

In addition to the above holding was the discussion that the court undertook with reference to the question regarding when the employer should be held liable for the sexual harassment of its employees.

A couple of open questions after the Meritor case were:

- What degree of abuse is needed to constitute hostility that interferes unreasonably with a victim's work performance, and
- What is the nature and extent of an employer's liability for hostile work environment?

In part two of this series will we discuss these two questions and how they relate to common workplace environments. This will include several references to landmark court cases dealing with sexual harassment and employer liability.

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Quiz

CDE Article – SEXUAL HARASSMENT FACT, FICTION & PREVENTION (Part I)

Name: _____ Date: _____

Agency: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

1. According to surveys completed during the 1980's this percentage of female employees felt they had been subjected to unwanted sexual harassment or advances at work.
 - a. 40 - 90%
 - b. 60 – 70%
 - c. 20 – 40%
 - d. 30 – 50%

2. Some of these same studies have indicated that up to 95% of such incidents may not be reported.
 - a. True
 - b. False

3. The primary underlying basis for claims involving sexual harassment issues comes from the Civil Rights Act of:
 - a. 1991
 - b. 1974
 - c. 1982
 - d. 1964

4. This Civil Rights Act was amended in _____ allowing compensatory damages for violation of the law.
 - a. 1991
 - b. 1974
 - c. 1982
 - d. 1964

5. After enactment of this Amendment sexual harassment victims may recover compensatory damages beyond back pay and are allowed to present their cases in a jury trial.
 - a. True
 - b. False

6. EEOC stands for:
 - a. Equal Employment Opportunity Center
 - b. Equal Employment Opportunity Commission
 - c. Equal Employment Overseeing Council
 - d. Equal Employment Option Commission

7. Quid Pro Quo harassment occurs when submission to or rejection of "unwelcome" sexual advances or conduct of a sexual nature is used as the basis for employment decisions affecting the individual or the individual's submission to such conduct is made a term or condition of employment.
 - a. True
 - b. False

8. Hostile Environment harassment occurs when "unwelcome" sexual advances or conduct of a sexual nature is used as the basis for employment decisions affecting the individual or the individual's submission to such conduct is made a term or condition of employment.
 - a. True
 - b. False