

SEXUAL HARASSMENT PREVENTION

Office of Equal Opportunity Programs/ADA Coordinator
Division of Human Resources

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Unwelcome sexual advances, requests for sexual favors, and other verbal and physical conduct of a sexual nature constitute sexual harassment when:

1. submission to such conduct is made either explicitly or implicitly, a term or condition of an individual's employment/academic performance;
2. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals;
3. or such conduct has the purpose or effect of substantially interfering with an individual's work performance, creating an intimidating, hostile or offensive work environment.

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TWO TYPES OF SEXUAL HARASSMENT

QUID PRO QUO

The sexual act or a sexual favor is the prerequisite condition to employment or employment decisions (i.e., promotion, job benefits, etc.), or academic success or evaluation.

Refusal to engage in the sexual act or provide a sexual favor results in being fired, denied promotion, or denied a job benefit, or denied some academic benefit (i.e., an appropriate grade, enrollment, participation, etc.).

There is proof the sexual demand was linked to a tangible, economic aspect of the harassed employee's compensation, term, condition or privilege of employment, or a student's enrollment, academic benefit, or participation.

HOSTILE ENVIRONMENT

The threat takes the form of ongoing harassment that interferes with work or school by making the atmosphere intimidating and unpleasant. The actions are generally repeated.

The atmosphere is made hostile or abusive by the unequal treatment of the sexes or individuals.

The harassment is "sufficiently severe or pervasive as to alter the conditions of the victim's employment" or academic performance, and

A person is denied the equal employment or equal educational opportunities guaranteed by law and the Constitution.

QUID PRO QUO VS. HOSTILE ENVIRONMENT

QUID PRO QUO

- When something, such as a job, a grade, or a letter of recommendation is given or withheld on the basis of an individual's response to a request for sexual favors (i.e., "if you don't sleep with me, you won't get the promotion.")
- One incident is enough to prove sexual harassment.
- Agency is liable whether or not it knew of the harassment.

HOSTILE ENVIRONMENT

- An atmosphere that interferes with an employee's ability to work.

ELEMENTS OF A HOSTILE ENVIRONMENT

- The behavior is unwelcome.
- The harassment was based on sex or gender.
- The harassment is severe or pervasive enough that it created a hostile or abusive environment that altered a term, condition or privilege of employment or education.
- The agency knew or should have known of the harassment and failed to take prompt and effective remedial action.
- The less severe the conduct, the more it has to be repeated to qualify as sexual harassment.

WHAT TO DO IF YOU ARE IN A CONSENSUAL RELATIONSHIP

- a. Consult your institution's policy immediately. It is important to know where it stands on the subject.
- b. Determine if you are in violation of the policy. Be aware, however, that regardless of the institution's policy or lack of one, the fact that a relationship was, at one time, consensual is no defense in the event of subsequent charges of sexual harassment or retaliation.
- c. Determine whether an ethical conflict of interest exists. You may have a direct conflict of interest if you are in a position to:
 - Hire or fire the person
 - Recommend or refuse to recommend the person for a job, promotion, etc.
 - Give or withhold credit for a project
 - Evaluate the person's work or academic performance
- d. If a direct conflict of interest does not exist, determine whether there is any sort of indirect conflict which could result in a similar ethical dilemma as that presented by the direct conflict. There may be an indirect conflict of interest if you are in a position to:
 - Influence co-workers on behalf or against the person; or
 - Cause others to feel disadvantaged because of your actions on behalf of the person.
- e. Act to remove the conflict of interest immediately. This may be accomplished in a number of ways, including withdrawing from the supervisory position over the person, if possible, or ending the relationship, or having the student enroll in class with a different instructor.
- f. If your institution's policy requires it, report the relationship to a supervisor or administrator to ensure that all conflicts have been adequately resolved.
- g. Miami Dade College strongly discourages amorous relationships, whether consensual or not, between employees who supervise students; between faculty members and students in their classes; and between supervisors and subordinates (College Procedure 1665 – Discrimination and Harassment Grievance Process).

SEXUAL HARASSMENT INVESTIGATION CHECKLIST FOR MANAGERS

1. Name of Complainant (at least first name, if the person wishes to remain anonymous)
2. Position
3. What happened (Questions for the Complainant)
 - a. WHO harassed you? (No name is needed yet, but the role of the person is an important element, for example, supervisor or fellow employee).
 - b. HOW did the harassment take place? (Try to get a very explicit description of the alleged harassing action. This is sometimes quite difficult because the victim is often embarrassed by the event).
 - c. WHERE did the incident take place?
 - d. WHEN did the incident take place? (Date and time, if possible)
 - e. If more than once, HOW OFTEN?
 - f. How did you FEEL about it? What was your RESPONSE?
 - g. In what way does the alleged harasser have POWER over the success (or other well-being) of the harassed?
 - at the present time?
 - In the future?
 - h. Were there any WITNESSES? If YES, WHO?
 - i. Did you tell anyone about your experience after the incident? If YES,
 - WHO?
 - WHEN?
 - WHERE?
 - WHAT DID YOU TELL HIM/HER?
 - WHAT WAS HIS/HER RESPONSE?
 - j. Do you think there might be OTHER VICTIMS?
 - k. Do you have or think you can discreetly obtain KNOWLEDGE OF OTHER INCIDENTS of sexual harassment by the alleged harasser?
 - l. Do you know of (or perceive) any CONSEQUENCES or effects of your response?
 - Were they explicitly stated? How?
 - Implied? How?
 - m. If some time has elapsed since the incident, have any CONSEQUENCES occurred? What? How?
 - n. What would you like to have DONE?
 - For you?
 - For others?
 - With respect to the alleged harasser?
4. Key decisions (for investigators)

Has sexual harassment occurred? (If YES, continue; if NO, go to "Options to proceed from here.")

How severe is the harassment?

Does it warrant emergency action?

Does the matter seem suitable for informal resolution?

What is the potential for retaliation?

Can I protect the Complainant? (be realistic)

How?

How can the complainant protect herself/himself?

What options are the Complainant willing to pursue?
5. Consultation/referral/instructions (to the Complainant)

Options to proceed from here

 - If there is no harassment, how to counsel the employee
 - If there is likelihood of harassment –
 - *Internally*: What can employee do independently; what are the company's third-party processes?
 - *Externally*: Legal options outside the organization, (i.e., EEOC, State Human Rights/Civil Rights Commissions).

Recognize that as an individual you may be adversely affected. You may eventually have to leave, be fired, be branded a troublemaker, or otherwise be punished. Plan accordingly, but recognize that by dealing with the problems, you may help make working life better for everyone from this day on.

WHAT EVERYONE NEEDS TO KNOW ABOUT HANDLING SEXUAL HARASSMENT

Take the report seriously. Assure the person that the complaint or problem is being taken seriously and that the institution will respond to the problem promptly.

Listen, sympathize, but don't judge. Listen to what the person has to say, sympathize, but make no judgment or commitment regarding the allegations or how the investigation will be conducted. Do assure the person that the institution takes sexual harassment seriously and will not tolerate it.

Don't delay. If you are not the individual designated to process sexual harassment complaints, tell the complainant who is responsible and offer to help contact that person. If that person is not immediately available, tell the complainant you will follow through immediately after this interview. Then do it as soon as possible. Delays of even a few days can make investigations difficult or send a signal to the complainant that the institution is not taking the complaint or problem seriously.

Respond to Concerns. If the complainant expresses or indicates fear, assure the person that the institution will do everything in its power to ensure confidentiality (but make no promises), prevent retaliation and stop further harassment. If you are the person designated to process complaints or investigate them, answer any questions about the complaint process that will not jeopardize the investigation. If you are not the appropriate person to process a complaint, assure the complainant that his or her questions will be answered by the appropriate person.

Document. Write a detailed summary of what the complainant told you, including your observations of the person's demeanor. Submit it to the individual who will be processing the complaint.

Follow up on the complaint. Check with the complainant the next day to ensure that he or she is getting needed assistance.

Avoid using "Dangerous Words," such as "It's just teasing" or "It's no big deal."

BEHAVIOR THAT CONSTITUTES SEXUAL HARASSMENT

“THE DON'TS ”

VERBAL ACTIONS TO BE AVOIDED:

1. Vulgar, sexually explicit language
2. Sexual comments regarding physical appearance
3. Sexual comments toward persons or in general
4. Off-color sexual jokes or anecdotes
5. Explicit questions about one's sex life, sexual preference or sexual orientation
6. Comments, sexually explicit or implicit, about one's clothing, body or looks
7. Repetitively asking for dates
8. Use of sexually harassing terms to refer to females or males (i.e., bitch)
9. Terms of endearment (i.e., *honey, sweetheart, darling, etc.*)
10. Whistling, kissing sounds, smacking noises
11. Rumor mongering about a person's sex life in front of them or behind their back

NON-VERBAL ACTIONS TO BE AVOIDED :

1. Unsolicited or inappropriate gifts (i.e., *underwear, nighttime apparel*)
2. Writing suggestive notes or sending unwelcome cards
3. Offensive photographs or pictures
4. Staring at a person in an unwelcome manner (i.e., *the once over*)
5. Stalking a person at the place of employment or after hours
6. Kisses, making facial expressions, or sexual gestures (i.e., *grabbing one's crotch, pelvic thrusts, licking one's lips, etc.*)
7. Touching a person's hair, clothing, or body when the touching is unwelcome (i.e., *pushing one's hair out of eyes, back massages, etc.*)
8. Standing inappropriately closed to someone
9. Hugging and kissing when it's uninvited
10. Rubbing against someone when it is uninvited

RECOMMENDED ACTIONS TO BE FOLLOWED BY ALLEGED VICTIMS OF SEXUAL HARASSMENT

This list assumes that you recognize that you are a victim of sexual harassment. You will need to decide which strategy is most important for you at this time. Probably all of these will be necessary sooner or later.

1. Confront your Harasser

No doubt you have tried ignoring or avoiding the harasser and it has not worked. Confront the person in as forceful a way as possible. Say "NO" and inform the harasser that offensive comments, actions, etc. are not welcome. Do this verbally or in writing and keep copies.

In writing a letter, keep it polite and low-key. Mary Rowe in her article "Ideas for Action", which appears in *The Harvard Business Review*, May-June 1981, recommends three essential parts:

- a. A detailed statement, including a precise rendition of all facts and dates relevant to the alleged harassment
- b. A description of your feelings and the impact of the harassing behaviors or actions on your productivity, career objectives, and physical and mental health. Include examples of perceived and actual costs (such as absenteeism), as well as damages
- c. A short statement describing your expectation that the offensive behaviors and actions will stop

2. Keep Records

Document everything in writing, on tape, or tell a friend. Indicate dates, witnesses, the nature of the behavior (be specific) and include any actions you have taken to resolve the problem.

3. Find Witnesses or Colleagues who will Corroborate your Experiences

Many harassers are repeaters. Share your experience with co-workers. Inquire as to whether they have been harassed and, if so, what actions have been taken. Ask if they'll support you, if you decide to take action. Two (2) accusations are much harder to ignore than one.

4. Get Emotional Support

Recognize that you are faced with a crisis that can damage your health, self-confidence, and career. Choose your help carefully. Many men and women, including professional therapists and counselors will not understand your predicament.

5. Research your Options

If the behavior continues, send a 2nd letter explaining what must be done differently. If this fails to discourage the offender, contact your supervisor, affirmative action officer, or other appropriate staff member and seek advice. Other options to be exhausted before filing a formal complaint are:

- a. Within the Workplace. Examine complaint procedures. Find out what you can about the harasser's supervisors and the personnel operation. Discuss a strategy with someone in the company (see preceding paragraph) you can trust. If you end up in legal proceedings, it is vital to have followed the correct "channels."
- b. Through Your Union or Professional Association. If you don't want to talk to your closest representative, try talking with a woman officer. If you're not affiliated, try to get helpful advice from a working woman's organization.
- c. Through the Legal System:
 1. Call a women's legal center or an attorney that you know
 2. Call your state commission on human rights/civil rights to discuss your situation and how to file a complaint under sex discrimination

Be sure to document all these contacts in your written or taped records. If you are reticent or reluctant to initiate any action with an alleged harasser, seek help from your supervisor or appropriate staff member.

INDEX

NO.

TITLE

[Policy I-21](#) [Equal Access/Equal Opportunity](#)

[Procedure 1665](#) [Discrimination and Harassment Grievance Process](#)