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What do I need to know about...

WORKPLACE HARASSMENT

Under federal law and Department of Labor (DOL) policy, harassment by DOL employees of DOL employees based on race, color, religion, sex (including gender identity and pregnancy), national origin, age, disability, genetic information, sexual orientation, or parental status is prohibited. The Department of Labor does not permit harassing conduct by anyone in the workplace, including contractors.

Prohibited workplace harassment may take either of two forms. It may entail "quid pro quo" harassment, which occurs in cases in which employment decisions or treatment are based on submission to or rejection of unwelcome conduct, typically conduct of a sexual nature. Workplace harassment may also consist of offensive conduct based on one or more of the protected groups above that is so severe or pervasive that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as being fired or demoted).

DOL policies and procedures promote prompt recognition, reporting, and remedying of harassing workplace conduct with the goal of eliminating such conduct quickly and effectively, even in cases in which the reported conduct may not be severe and pervasive so as to constitute a violation of federal law.¹

This fact sheet provides a brief explanation of workplace harassment, how to recognize it, and both the responsibilities of an employee who has witnessed or been subjected to workplace harassment and the agency that has been put on notice of allegations of workplace harassment.

Two basic types of unlawful harassment

Quid Pro Quo Harassment – "This for That"

Quid pro quo harassment generally results in a tangible employment decision based upon the employee's acceptance or rejection of unwelcome sexual advances or requests for sexual favors, but it can also result from unwelcome conduct that is of a religious nature. This kind of harassment is generally committed by someone who can effectively make or recommend formal employment decisions (such as termination, demotion, or denial of promotion) that will affect the victim.

Examples:

- supervisor who fires or denies promotion to a subordinate for refusing to be sexually cooperative;
- supervisor requires a subordinate to participate in religious activities as a condition of employment;
- supervisor offers preferential treatment/promotion if subordinate sexually cooperates or joins supervisor's religion.

Hostile Work Environment Harassment

A hostile environment can result from the unwelcome conduct of supervisors, co-workers, customers, contractors, or anyone else with whom the victim interacts on the job, and the unwelcome conduct renders the workplace atmosphere intimidating, hostile, or offensive.

Examples of behaviors that may contribute to an unlawful hostile environment include:

- discussing sexual activities;
- telling off-color jokes concerning race, sex, disability, or other protected bases;
- unnecessary touching;
- commenting on physical attributes;
- displaying sexually suggestive or racially insensitive pictures;
- using demeaning or inappropriate terms or epithets;
- using indecent gestures;
- using crude language;
- sabotaging the victim's work;
- engaging in hostile physical conduct.

When harassing conduct violates the law*

First, unlawful harassing conduct must be unwelcome *and* based on the victim's protected status.

Second, the conduct must be:

1. subjectively abusive to the person affected; and
2. objectively *severe and pervasive* enough to create a work environment that a *reasonable person* would find hostile or abusive.

Whether an instance or a pattern of harassing conduct is *severe or pervasive* is determined on a case-by-case basis, with consideration paid to the following factors:

1. the frequency of the unwelcome discriminatory conduct;
2. the severity of the conduct;
3. whether the conduct was physically threatening or humiliating, or a mere offensive utterance;
4. whether the conduct unreasonably interfered with work performance;
5. the effect on the employee's psychological well-being; and
6. whether the harasser was a superior within the organization.

Each factor is considered, but none are required or dispositive. Hostile work environment cases are often difficult to recognize, because the particular facts of each situation determine whether offensive conduct has crossed the line from "ordinary tribulations of the workplace, such as the sporadic use of abusive language . . . and occasional teasing,"² to unlawful harassment.

*However, the intent of the Department of Labor's *Harassing Conduct Policy* is to provide a process for addressing incidents of unwelcome conduct long before they become severe and pervasive enough to create a hostile work environment under the law.

Resources and Responsibilities - What to do if you witness or are subjected to harassment

Harassing Conduct Policy – The Department has determined that the most effective way to limit harassing conduct is to treat it as misconduct, even if it does not rise to the level of harassment actionable under the law. The goal of this policy is to eliminate harassment before it becomes severe and pervasive enough to violate the law.

Therefore, for the purposes of the Harassing Conduct Policy, harassing conduct is defined more broadly as "any unwelcome verbal or physical conduct based on any characteristic protected by law when: (1) the behavior can reasonably be considered to adversely affect the work environment; or (2) an employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct." Conduct that "adversely affects the work environment," even though it may not be "severe or pervasive" as required under federal law, is prohibited by the Harassing Conduct Policy.

- *Examples include those listed above, as well as less severe or more isolated incidents, such as derogatory name calling, use of epithets, and unnecessary touching.*

It is the responsibility of **every** DOL employee to **promptly report** harassing conduct to anyone in your supervisory chain; or to your Agency EEO Manager in the National Office; or for regional employees, to the Regional Administrator, OASAM.

Management must take prompt, remedial action to investigate and eliminate any harassing conduct. All information will be maintained on a confidential basis to the greatest extent possible.

The Department cannot correct harassing conduct if a supervisor, manager or other Department official does not become aware of it. When an employee unreasonably fails to report harassing conduct, the Department has the right to raise this as a defense against a suit for harassment.

EEO Process – The Department's Harassing Conduct Policy is not intended to replace an employee's EEO rights. An employee may pursue claims of harassing conduct through both avenues simultaneously. To learn more about your EEO rights, please contact an EEO Counselor or visit CRC's web page at <http://www.dol.gov/oasam/programs/crc/index.htm>. Contact the Civil Rights Center at 202-693-6500 within 45 days of the alleged discriminatory event in order to preserve your right to file an EEO complaint. Any questions on this guidance should also be addressed to the Department of Labor's Civil Rights Center.

Footnotes

¹ The Department of Labor's Policy & Procedures for Preventing & Eliminating Harassing Conduct in the Workplace (Harassing Conduct Policy) is contained in DLMS 4 – Chapter 700.

² Faragher v. City of Boca Raton, 524 U.S. 775, 788 (1998).