

PREVENTING SEXUAL AND OTHER UNLAWFUL HARASSMENT

Oklahoma Department of Corrections
2016

Sexual and Other Unlawful Harassment:

- **Course Created by:**
Elvin Baum, Civil Rights Administrator,
DOC Employee Rights and Relations Unit; Oct2015; Reviewed/Approved: 21APR2016
- **Course revised by:** Terri Vogt, Oct2015; Terri Vogt and Valerie Hale, 20April2016
- **Course Approved:**
Phil Gilstrap, Training Manager, Employee Development Unit
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Data Sources:

OP-110214 "Workplace Violence" Effective: 08/22/2014

OP-110215 "Rules Concerning the Individual Conduct of Employees" Effective: 11/25/2014

OP-110410 "Prohibited Discrimination, Harassment and Retaliation" Effective: 12/03/2014

Website:

U.S. Equal Employment Opportunity Commission Website: <http://www.eeoc.gov/eeoc/publications/fs-sex.cfm>

<http://www.attorneyatlawmagazine.com/miami/social-media-a-growing-concern-for-sexual-harassment-in-the-workplace-2/>

Course Objectives:

1. Using the provided definition of “harassment,” determine what **behavior** may be considered harassment, and **where** harassing behavior may occur.
2. Describe how the term “**quid pro quo**” relates to any type of harassment.
3. Describe how social media may be used for harassment.
4. Describe what groups of individuals are considered a “**protected class.**”
5. Describe behaviors that may constitute a “**hostile work environment.**”
6. Describe the similarities and differences between “**harassment,**” “**sexual harassment,**” “**bullying,**” and “**workplace violence.**”
7. Describe the procedure for employees to report any form of harassing, bullying or violent behavior.

Topics of Discussion:



- Inappropriate Conduct
- Social Media Harassment
- Harassment, Discrimination and Protected Classes
- Quid Pro Quo Harassment
- Hostile Work Environment
- Types of Conduct Creating a Hostile Environment
- How to Report Harassment, Discrimination, Retaliation
- DOC OP-110410 “Prohibited Discrimination, Harassment and Retaliation”

Facts About Sexual Harassment:

What is it?

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

- 1) explicitly or implicitly affects an individual's employment,
- 2) unreasonably interferes with an individual's work performance,
- 3) creates an intimidating, hostile, or offensive work environment.

*This information on this page is listed on the U.S. Equal Employment Opportunity Commission Website:
<http://www.eeoc.gov/eeoc/publications/fs-sex.cfm>*

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to, or discharge of, the victim.
- The harasser's conduct must be unwelcome.

Prevention of Sexual Harassment:

Prevention is the best tool to eliminate sexual harassment in the workplace.

For Employees:

- It is helpful for the employee to inform the harasser directly that the conduct is unwelcome and must stop.
- The employee should use any employer complaint mechanism or grievance system available.

For Employers:

Employers are encouraged to take steps necessary to prevent sexual harassment from occurring. They should:

- Clearly communicate that sexual harassment will not be tolerated.
- Provide sexual harassment training to their employees.
- Establish an effective complaint or grievance process and take immediate and appropriate action when an employee complains.
- Avoid unlawful retaliation against an individual for opposing employment practices that discriminate based on sex or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under Title VII. [Title VII of the Civil Rights Act of 1964]

Employment Law:

Quid pro quo:

An employment decision — like a promotion, an assignment, or even keeping your job — is based on your submission to the sexual harassment

Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature constitutes quid pro quo sexual harassment when:

- (1) submission to such conduct is made either explicitly or implicitly a term or condition of employment or
- (2) submission to or rejection of such conduct is used as the basis for employment decisions.

Employment Law:

Hostile work environment:

The sexual harassment makes your workplace environment intimidating, hostile, or offensive

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute hostile-environment sexual harassment when the conduct has the purpose or effect of unreasonably interfering with an employee's work performance or of creating an intimidating, hostile, or offensive working environment. Courts consider several factors to determine whether an environment is hostile, including (1) whether the conduct was verbal, physical, or both; (2) how frequently it was repeated; (3) whether the conduct was hostile or patently offensive; (4) whether the alleged harasser was a co-worker or supervisor; (5) whether others joined in perpetrating the harassment; and (6) whether the harassment was directed at more than one individual.

Other Forms of Inappropriate / Unlawful Conduct or Behavior:

Harassment

Offensive, belittling or threatening behavior towards an individual or group that is unsolicited, usually unreciprocated and usually, but not always, repeated.

Bullying

A term used to describe repeated abusive and offensive behavior by a person or group towards another, in which some circumstances may involve inappropriate physical behavior.

Other Forms of Inappropriate / Unlawful Conduct or Behavior:

Workplace Violence:

Is violence or the threat of violence against workers. It can occur at or outside the **workplace**, and range from threats and verbal abuse to physical assaults and homicide; which is one of the leading causes of job-related deaths.

Impairment in the workplace:

Employees impaired by alcohol or other substances.



Inappropriate Conduct in the workplace is the question.

- It is **too expensive** to be dealing with inappropriate behavior in the workplace.
- There is now **social media sexual harassment** with the wide use of Facebook, Twitter, SnapChat, cell phones, tablets, e-mail, etc.
- Leaders must support the organization's policy against sexual harassment.

New Technology Challenges for Employers:

- **Virtual harassment**—harassment through a social media site, for example, "friending" a co-worker on Facebook and then sending offensive messages (or repeated requests for a date)
- **Textual harassment**—harassing, intimidating, or inappropriate text messages
- **Sexting**—sexually explicit or offensive photos or videos sent via electronic media
- **Cyberstalking**—harassing an employee by following him or her on blogs, posts, and social websites

Four-in-ten internet users are victims of online harassment, varying degrees of severity

Among all internet users, the % who have experienced harassment or not and the % who have experienced more vs. less severe forms of harassment ...



Source: American Trends Panel (wave 4). Survey conducted May 30-June 30, 2014. n=2,839.

PEW RESEARCH CENTER

New Technology Challenges for Employers:

While employees may dismiss a message as "just a joke," employers know that employees often disagree about where joking ends and harassment begins. And an employee who claims harassment has a running record (aka great evidence) conveniently located on whatever electronic device, personal or otherwise, received the offensive messages.

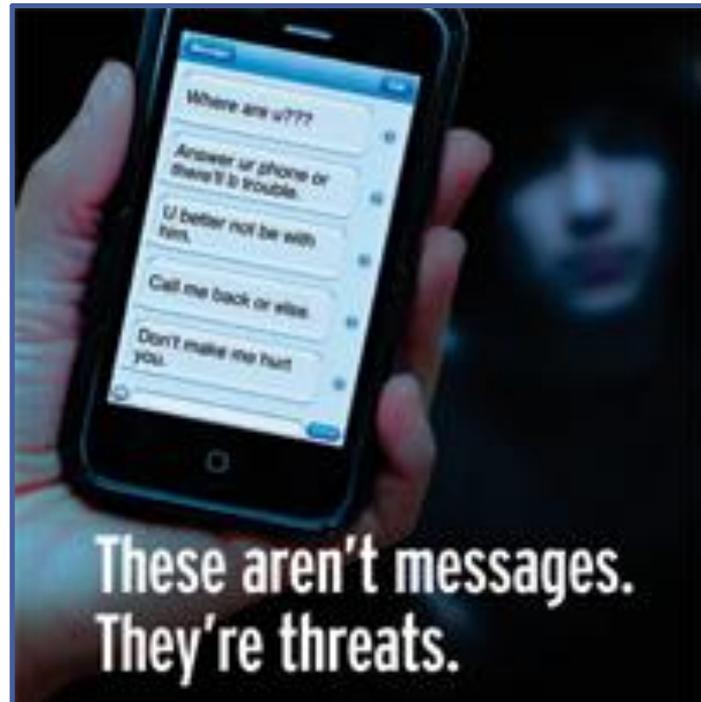
<http://www.attorneyatlawmagazine.com/miami/social-media-a-growing-concern-for-sexual-harassment-in-the-workplace-2/>

Ena T. Diaz, an employment litigation attorney, wrote an article entitled, "Social Media: A Growing Concern for Sexual Harassment in the Workplace," for Attorney At Law Magazine. In it she states:

"Employees who have filed a claim for sexual harassment in the workplace that may arise from verbal conduct or physical behavior that occurred in the workplace and are claiming severe emotional distress must be mindful that courts allow employers to obtain copies of the employees profiles, updates, messages, wall comments and photos posted on social networking sites as this may reveal or relate to their mental or emotional state. Employees must also be aware that an employer may discipline them or terminate their employment for having violated the employer's written anti-harassment policy. When posting on a social networking site, an employee must be fully aware to exercise good judgment in their communications as an inappropriate comment of a sexual nature made to another employee may come back to haunt them in the workplace."

New Technology Challenges for Employers:

- In addition, employees may not understand that offensive electronic communications affecting the workplace can constitute workplace harassment regardless of whose electronic device is used.
- Many employees may believe that off-duty conduct outside the workplace is unrelated to an employer's responsibility to maintain a workplace free of discrimination.



Behaviors Prohibited by Law

Discrimination

- No employee shall be in anyway favored or discriminated against because of political/religious opinions or affiliations, race, creed, gender, color, age, national origin, or physical handicap so long as the physical handicap does not render the employee unable to perform the essential function of the position for which the person is employed.

Harassment

- Actions or statements related to a person's protected class, including offensive remarks or physical aggression, among other behaviors.

Retaliation

- Acting in revenge or “getting even.”

Categories of Protected Classes

Age (40 or Older)



Disability



Genetic Information



National Origin



Race/Color/Creed



Religion



Political Affiliation/Opinion



Sex/ Gender



Veteran's Status



Pregnancy



Characteristics or factors which cannot be targeted for discrimination and harassment under state and federal laws; veteran's status, political/religious opinion or affiliation and creed are also included in this category.

Quid Pro Quo Harassment

"**Quid pro quo**" is Latin, meaning "something for something." Essentially, it is a trade. When the trade is an exchange involving race, sex, gender identity and expression, color, national origin, religion, creed, age, sexual orientation, political affiliation, veteran status, disability or genetic information, it is impermissible. Most people relate *quid pro quo* only to **sexual harassment**. However, it can be applied to other forms of harassment as well.

Quid Pro Quo Harassment

The following are examples of quid pro quo harassment--when an employer makes conformity to a specific act a prerequisite to getting something in exchange:

“Hire only Christians for these positions and you'll get the program coordinator job.”

“Have an affair with me, and your promotion is guaranteed.”

“Have an affair with me, and you will get an A in my course.”

Hostile Work Environment

Employment law:

“Hostile environment” due to sexual harassment: Refers to a situation where employees in a workplace are subject to a pattern of exposure to unwanted sexual behavior from persons other than an employee's direct supervisor, and when supervisors or managers take no steps to discourage or discontinue such behavior.



Types of Conduct Creating a Hostile Environment:

- Physical Conduct
- Verbal Conduct
- Non-Physical,
Non-Verbal



Some situations that have been ruled to constitute such a hostile environment are:

- Posting pictures of pornography in employee cubicles
- Consistently telling "dirty" jokes or stories where all employees in the work area can hear them
- Tolerating employees who make sexually suggestive remarks about other employees within earshot of others
- Allowing peer employees, clients, suppliers, delivery persons, or even customers (*Lockard v. Pizza Hut*, [162 F.3d 1062, 1073](#)) to persist in unwanted attention, such as asking for dates
- Allowing the use of derogatory terms with a sexual connotation (e.g., "girlie-man," "player") to be used to describe co-workers
- Allowing frequent physical contact, even when not sexual

Physical Conduct:

Unwelcome/Unwanted Physical Contact:

- Fondling, grabbing, patting,
- Pinching, stroking
- Lewd suggestive body language or gestures
- Cornering, blocking, leaning over
- Rubbing up against, invading personal space
- Attempted touching, kissing
- “Accidental” contact



Verbal Conduct

- “I’m a Hugger.” Be careful, because not everyone likes to hug.
- Repeated words or comments of a sexually offensive nature.
- Ongoing remarks about a person’s body, clothing or personal life.
- Repeated words or comments of an offensive nature directed at a protected characteristic; i.e. racial slurs and jokes.
- ***What you do at (and away) from work is company business.***

Non-Physical / Non-Verbal

- Posting or circulating offensive material, such as, letters, posters, e-mails, photos, comics, graffiti, texts, internet posts, etc.
- Suggestive/insulting sounds; whistling
- Leering or staring
- Obscene gestures
- Check locker rooms, restrooms, etc. to make sure that there is nothing on the walls, doors, etc.



Same Sex Harassment

Sexual harassment could be male on male; or female on female.



A Hostile Work Environment:

Physical/psychological intimidation, threats, and abuse behavior in the workplace:

- Exists when an employee experiences **workplace harassment** and fears going to work because of the offensive, intimidating, or oppressive atmosphere generated by the harasser(s).
- It may also be created when management acts in a manner designed to make an employee quit in retaliation for some action.

For example: if an employee reported safety violations at work, was injured, attempted to join a union, or reported regulatory violations by management, then their response might be to harass and pressure the employee to quit.



A Hostile Work Environment:

Intimidation, also called “**cowing**,” is intentional behavior that "would cause a person of ordinary sensibilities" fear of **injury** or **harm**.

It is not necessary to prove that the behavior was so violent as to cause **terror** or that the victim was actually frightened.



A Hostile Work Environment:

Threat, criminal threatening (or threatening behavior) is the crime of intentionally or knowingly putting another person in fear of imminent bodily injury.

A **threat of harm** generally involves a perception of injury, physical or mental damage; an act or instance of injury, or a material detriment or loss to a person.

A **terroristic threat** is a crime generally involving a threat to commit violence communicated with the intent to terrorize others.



What is expected of you?

It is expected that **everyone** (employees and supervisors) in the workplace will behave in a professional manner, and treat each other with dignity and respect.



What is expected of you?

Employees and Supervisors

All employees have a role to play in eliminating inappropriate behavior by:

- Refusing to participate in this behavior
- Reporting any experiences of the behavior
- Supporting colleagues in saying “no” to this behavior.

Report Incidents

All reports of inappropriate behavior will be **treated seriously** and investigated in a prompt, confidential and impartial manner.

Employees who report inappropriate behavior should not be victimized or **retaliated** against.

Reporting A Complaint:

1. Facility/district/unit heads shall immediately report **all allegations of discrimination, harassment or retaliation (as defined by policy)** to the Employee Rights and Relations Unit.
2. Any **supervisor** receiving a complaint or who becomes aware of conduct which is in violation of policy shall immediately report the complaint or conduct to the Employee Rights and Relations Unit.
3. **Employees** shall report any conduct which is perceived to be harassment immediately. Reports or complaints of harassment under this procedure may be made directly to the Employee Rights and Relations Unit without submission through the chain of command.
4. The grievance manager shall report any matter containing allegations of discrimination, sexual harassment, or retaliation to the Employee Rights and Relations Unit for investigation. Discrimination investigations within or outside the grievance process shall be conducted by a certified investigator as directed by the director or designee.

Reporting A Complaint:

5. Complaints of discrimination, harassment, or retaliation for engaging in protected activity shall be reported immediately to any one of these individuals:

- a. The immediate supervisor.
- b. Any level of management above the immediate supervisor, especially when the issue involves the immediate supervisor.
- c. The Civil Rights Administrator within the Employee Rights and Relations Unit.
- d. The agency's grievance manager, as prescribed by policy.

Retaliation:

- It is illegal to fire, demote, harass, or otherwise “retaliate” against people (applicants or employees) because they filed a charge of discrimination, complained to their employer or other enforcement entity about discrimination on the job, or participated in an employment discrimination proceeding (such as an investigation or lawsuit).
- Federal and state laws, and DOC policy prohibits any form of retaliation against a person who complains about discrimination.
- Individuals who give information about a complaint, including all supervisors mandated to report directly to ERRU, and individuals who participate in an investigation are also protected from workplace reprisals.

Investigating Complaints:

Certified Investigator:

- Investigations into allegations of discrimination, harassment and retaliation shall be conducted by a state certified discrimination complaint investigator.
- No determination shall be made regarding whether discrimination, harassment, or retaliation has or has not occurred except by a certified discrimination complaint investigator.
- Digital recordings shall be made of all interviews. Interviewees may not make recordings.

Time Frame:

- Investigations shall be initiated within two business days by establishing contact with the complainant.
- The investigation shall be completed within a reasonable time frame.

At the conclusion of the investigation:

- A report of the investigation process and findings shall be submitted to the chief administrator of Employee Services.
- After completion of an investigation, any person(except an offender)who participated, may request to inspect the information they provided. The director may approve or deny this request.

Final Review:

- Final review of the investigation is completed by the director or designee.
- The report and other documentation shall be returned to ERRU for final closure and storage. Upon investigation closure, the report and supporting material shall be sealed and maintained.

OP-110410 "Prohibited Discrimination, Harassment and Retaliation"

Response to Complaints:

The following measures may be taken in response to a complaint:

- Cease and Desist Order
- Separation of the parties involved
- Investigation of the complaint; including interview of those involved in the complaint/witnesses
- Steps to correct behavior
- Disciplinary action
- Transfer
- Training

Disciplinary Action:

Any employee who violates procedure by engaging in conduct that constitutes discrimination, harassment, bullying, or retaliation shall be subject to disciplinary action up to and including termination in accordance with OP-110415 entitled “Progressive Disciplinary Procedures.” Disciplinary measures may also be imposed upon:

- Anyone in a supervisory or management capacity who had knowledge of discriminatory conduct and failed to report the knowledge or take corrective action;
- Anyone who interferes with the resolution of a complaint by threats, intimidation or retaliation or reprisal; or
- Anyone who files a frivolous complaint or one that is initiated in bad faith.

OP-110410 “Prohibited Discrimination, Harassment and Retaliation”

Summary:

Part of the mission of the Oklahoma Department of Corrections is to protect its employees; which includes providing a safe work environment.

- Any employee who is subjected to adverse behavior from co-workers and supervisors can become a distracted and unhappy worker. This in turn can cause an unsafe work environment for all staff members.
- Supervisors/managers are obligated to address individual or group behavior that is intimidating, threatening or discriminatory against other employees.
- Employees should use established procedures to report, and cooperate with any investigations into allegations of, such behavior.
- **All employees** are responsible for fostering an attitude of respect and fair treatment when interacting with those they work with and supervise.

REVIEW QUESTIONS:

- What questions do you have?
- How would you define harassment versus sexual harassment?
- What is meant by the term “quid pro quo?”
- What are some examples of groups considered to be a protected class?
- What should you do if you witness an incident that you consider to be sexual harassment of another employee? Is that procedure different for supervisors?
- What should you do if an incident you consider to be sexual harassment (not involving an offender) is related to you by another employee? Is that procedure different for supervisors?
- What conditions/actions may create a hostile work environment?