

## **Sexual Harassment Q&A**

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### **What is sexual harassment?**

Sexual harassment is a kind of sex discrimination in the workplace that violates both federal and state anti-discrimination laws. A wide variety of behavior may constitute sexual harassment, and both men and women can be targets. The perpetrator may be of the same or opposite sex, and may be a supervisor, a co-worker, or even a non-employee. To be considered sexual harassment under the law, the behavior must include a couple elements.

First, it must involve either unwanted sexual advances or some other unwelcome conduct - such as demands for sexual favors or touching - that happens because of the victim's sex or gender.

Second, the behavior must either cause a "tangible personnel action" (such as hiring, firing, non-promotion, demotion, undesirable reassignment, or change in pay or benefits in response to the employee's refusal to submit to the unwelcome conduct), or, if there is no tangible personnel action, the behavior must be so severe or pervasive that it in effect changed the victim's working conditions, making it a sexually hostile work environment.

Only behavior that meets the two elements above can constitute a civil legal claim for sexual harassment.

### **What is the first step I should take if I believe I am being sexually harassed?**

An employee who believes that she is being sexually harassed can start taking action in two ways:

(1) Document the harassment. Someone who is being harassed should take notes by making a record of all the unwanted behavior and adding to it as new things happen. She should also retain email, text messages, voicemails, or other evidence demonstrating the conduct.

(2) Seek advice. A person who is being harassed should contact an attorney to find out if the behavior meets the legal definition of sexual harassment and what she can do about it. It is especially important for her to seek out legal advice *before* following the company's anti-harassment policy if she has concerns that reporting will lead to retaliation. For example, if other people who have reported sexual harassment have been managed out of the company or if the alleged harasser has had multiple complaints brought against him with no type of corrective action administered, legal intervention is likely going to be necessary.

### **I spoke to HR about being sexually harassed, and they encouraged me not to pursue my complaint. Even though I said that I wanted my complaint fully investigated, HR didn't do anything. What are my options now?**

Employers have an obligation to keep their workplaces free from sexual harassment. If an employee reports sexual harassment and the company does not take action to stop it, the company may be legally responsible for harassment that continues.

A person who has reported sexual harassment has options even if the employer fails to take appropriate action to stop the harassment. She can file a complaint with the [Equal Employment Opportunity Commission](#) or with state or local EEO agencies.

### **What if the person harassing me is a coworker or customer, not a supervisor?**

Employees do not have to endure sexual harassment from coworkers or customers. If a person is being harassed at work, she can report it to a supervisor. Once an employer finds out about sexual harassment at the workplace, whether the harasser is an employee or not, the employer must take steps to address it. An employer that knows that the sexual harassment is occurring and does nothing may be legally responsible.

Some states and municipalities, [including D.C.](#), have laws that make it unlawful for any person to aid and abet sexual harassment. That means that a person cannot help another person sexually harass an employee by, for example, helping the harasser isolate the employee or by putting the employee in a vulnerable position. A person who knows about sexual harassment and helps it occur may be legally responsible.

### **I was sexually harassed a while ago. Do I still have a claim?**

Generally, a person has 180 or 300 days (depending on the state where the conduct happened) from the day that the particular harassing act occurred to file a charge of sexual harassment. But for ongoing harassment that creates a sexually hostile work environment, the clock starts running at the last incident of harassment. Older incidents may still be included if they are part of an ongoing pattern of sexual harassment.

Other factors may also affect the statute of limitations. The best way to find out if you can still bring a claim is to contact an attorney.

### **I've signed a non-disclosure agreement as a condition of employment that precludes me from making negative comments about my employer. Can I still speak out about sexual harassment in my office?**

A non-disclosure agreement cannot block someone from her right to file a complaint with the Equal Employment Opportunity Commission or state EEO offices or to report unlawful conduct to law enforcement authorities. However, a non-disclosure agreement may require the employee to avoid speaking to the media or to the public.

### **In reaching a settlement of sexual harassment claims with my former employer, I signed both a non-disparagement and confidentiality agreement. Can I speak up publicly now about the abuse I suffered?**

Most employers will require employees to enter into confidentiality and non-disparagement agreements as a condition of settling their claims and receiving compensation. In negotiating such provisions, employees can often require employers to provide positive references and/or refrain from making negative or disparaging comments about the employee. But even if the employee enters into such an agreement, she always retains the right to report her concerns to the EEOC, law enforcement, or other regulatory agencies. And she always retains the right to testify truthfully in response to a subpoena or other court order.

### **Can my employer retaliate against me for filing a sexual harassment claim?**

It is against the law for an employer to retaliate against an employee for rejecting sexual advances,

opposing such misconduct, or reporting sexual harassment. If an employee reports sexual harassment and the employer takes action against her because of her complaint, the employee may have a claim for retaliation. To be considered retaliation under the law, the action must be something that would discourage a reasonable person from reporting the harassment. That includes actions such as hiring, firing, non-promotion, demotion, undesirable reassignment, retaliatory harassment or change in pay or benefits. Also, the employer must have taken the action because of the complaint.

### **Where can I get more information about sexual harassment?**

The [U.S. Equal Employment Opportunity Commission](#) has very helpful information and resources about sexual harassment.

If you are experiencing or have experienced sexual harassment, contact the experienced lawyers at Katz, Marshall & Banks for a confidential evaluation of your case without charge or further obligation.