

New York State Sexual Harassment Prevention Training

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Lesson 1: Sexual Harassment in the Workplace

Welcome to our training on sexual harassment prevention. I'm Janene Convery. In recent years, the topic of sexual harassment in the workplace has been brought into the national spotlight, bringing with it renewed awareness about the serious and unacceptable nature of these actions and the severe consequences that follow.

The term "sexual harassment" may mean different things to different people, depending on your life experience. That's why we're here today. Certain conduct that may seem acceptable or may have seemed acceptable in the past, may not be acceptable to the people we work with. The purpose of this training is to create a common understanding about what is and what is not acceptable in the workplace.

Sexual Harassment in the Workplace

New York State has long been committed to ensuring that all individuals have an equal opportunity to enjoy a fair, safe, and productive work environment. Laws and policies help ensure that diversity is respected and that everyone can enjoy the privileges of working in New York State. Preventing sexual harassment is critical to our continued success.

Let's start by making one thing clear: sexual harassment will not be tolerated. This means any harassing behavior will be investigated and the perpetrator or perpetrators will be told to stop. It also means that disciplinary action may be taken, if appropriate. If the behavior is sufficiently serious, disciplinary action may include termination. Repeated behavior, especially after an employee has been told to stop, is particularly serious and will be dealt with accordingly.

This interactive training will help you better understand what is considered by law to be sexual harassment. It will also show you how to report sexual harassment in the workplace, as well as your options for reporting workplace sexual harassment to external state and federal agencies that enforce anti-discrimination laws. These reports will be taken seriously and promptly investigated, with effective remedial action taken where appropriate.

What is Sexual Harassment?

Sexual harassment is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity, and the status of being transgender. In fact, harassment based on any characteristic protected under the New York State Human Rights Law is prohibited.



The standard for whether harassment is unlawful in the state is based on whether it subjects an individual to inferior terms, conditions, or privileges of employment because of their membership in one or more protected categories. Even if the individual does not make a complaint about the harassment to the employer, that fact will not be used to determine whether the employer may be held liable.

Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex when:

- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment, even if the reporting individual is not the intended target of the sexual harassment;
- Such conduct is made either explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment.

There are two main types of sexual harassment.

First, Hostile Environment.

A hostile environment on the basis of sex may be created by any action previously described, in addition to unwanted words, signs, jokes, pranks, intimidation, physical actions, or violence, either of a sexual nature or not of a sexual nature, directed at an individual because of that individual's sex.

Hostile environment sexual harassment includes:

- Sexual or discriminatory displays or publications anywhere in the workplace, such as displaying pictures, calendars, objects, or other materials that are sexually demeaning or pornographic.
- This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
- This also includes sexually oriented gestures, noises, remarks, jokes, or comments about a person's sexuality or sexual experience.

Also included are hostile actions taken against an individual because of that individual's sex, such as:

- Rape, sexual battery, molestation, or attempts to commit these assaults.
- Physical acts of a sexual nature (including, but not limited to, touching, pinching, patting, grabbing, kissing, and hugging)
- Interfering with, destroying, or damaging a person's workstation, tools, or equipment, or otherwise interfering with the individual's ability to perform the job;
- Sabotaging an individual's work;
- Bullying, yelling, and name-calling.

The second main type of sexual harassment is Quid Pro Quo Sexual Harassment.

Quid pro quo occurs when a person in authority trades, or tries to trade, job benefits for sexual favors. Quid pro quo is a legal term meaning a trade. This type of harassment occurs between an employee and someone with authority, like a supervisor, who has the ability to grant or withhold job benefits.



Quid pro quo sexual harassment includes:

- Offering or granting better working conditions or opportunities in exchange for sexual favors
- Threatening adverse working conditions (like demotions, shift alterations, or work location changes) or denial of opportunities if a sexual relationship is refused
- Using pressure, threats, or physical acts to force a sexual relationship, and
- Retaliating for refusing to engage in a sexual relationship

So who can be the target of sexual harassment? Sexual harassment can occur between any individuals, regardless of their sex or gender. New York Law protects employees, paid or unpaid interns, and non-employees, including independent contractors, and those employed by companies contracting to provide services in the workplace. Employers are prohibited from subjecting non-employees to any form of unlawful discrimination.

Similarly, we ask, who can be the perpetrator of sexual harassment? The perpetrator of sexual harassment can be anyone in the workplace. The harasser can be

- a coworker,
- a supervisor or manager,
- or any third-party, including: an intern, vendor, building security, client, customer, or visitor.

You may also wonder where workplace sexual harassment can occur. Harassment can occur whenever and wherever employees are fulfilling their work responsibilities, including in the field, at employer-sponsored events, trainings, conferences open to the public, and office parties. Employee interactions during non-work hours, such as at a hotel while traveling or at events after work, can have an impact in the workplace. Locations off site, and off-hour activities, can be considered extensions of the work environment. Employees can be the target of sexual harassment through calls, texts, email, and social media. Harassing behavior that in any way affects the work environment is rightly the concern of management.

Finally, let's close this lesson by talking about sex stereotyping. Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of either sex should act or look. Harassing a person because that person does not conform to gender stereotypes such as "appropriate" looks, speech, personality, or lifestyle is sexual harassment. Harassment because someone is performing a job that is usually performed, or was performed in the past, mostly by persons of a different sex, is sex discrimination.

Quiz: Sexual Harassment in the Workplace

1. T/F Sexual harassment is a form of sex discrimination and is unlawful in the state of New York.
2. Scenario: On Monday morning, “Tim” showed his coworker “Julie” inappropriate pictures from his friend’s bachelor party and included details of sexual encounters. This is an example of what form of sexual harassment?
 - A. Sex discrimination
 - B. Unwarranted harassment
 - C. Hostile environment
 - D. Quid pro quo
3. Which of the following is an example of quid pro sexual harassment?
 - A. Demoting an employee for refusing sexual advances
 - B. Displaying photo of spouse in swimsuit on desk
 - C. Promoting employee for good work performance
 - D. Asking a coworker out on a date
4. T/F New York law does not protect unpaid interns against sexual harassment.

Lesson 2: Retaliation and Supervisor’s Responsibility

Retaliation is any action taken to alter an employee’s terms and conditions of employment (such as a demotion, harmful work schedule, or location change) because that individual engaged in what are considered to be protected activities. Protected activities with regard to harassment include:

- Making a complaint to a supervisor, manager, or another person designated by your employer to receive complaints about harassment
- Making a report of suspected harassment, even if you are not the target of harassment
- Filing a formal complaint about harassment
- Opposing discrimination
- Assisting another employee who is complaining of harassment
- Providing information during a workplace investigation of harassment, or testifying in connection with a complaint of harassment filed with a government agency or in court

Any employee who has engaged in “protected activity” is protected by law from being retaliated against. Retaliation can be any such adverse action taken by the employer against the employee that could have the effect of discouraging a reasonable worker from making a complaint about harassment or discrimination. The negative action need not be job-related or occur in the workplace, and may occur after the end of employment, such as an unwarranted negative reference.

It’s important to note that a negative employment action is not retaliatory merely because it occurs after the employee engages in protected activity. Employees continue to be subject to all job requirements and disciplinary rules after having engaged in such activity.

The Supervisor's Responsibility

Supervisors and managers are held to a high standard of behavior. This is because:

- They are placed in a position of authority by the employer and must not abuse that authority.
- Their actions can create liability for the employer without the employer having any opportunity to correct the harassment.
- They are required to report any harassment that is reported to them, or which they observe.
- They are responsible for any harassment or discrimination that they should have known of with reasonable care and attention to the workplace for which they are accountable.
- They are expected to model appropriate workplace behavior.

Mandatory Reporting

Supervisors must report any harassment they observe or know of, even if no one is objecting to the harassment. If a supervisor or manager receives a report of harassment, or is otherwise aware of harassment, it must be promptly reported to the employer, without exception. Even if the supervisor or manager thinks the conduct is trivial; even if the harassed individual asks that it not be reported.

Supervisors and managers will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue. Supervisors and managers will also be subject to discipline for engaging in any retaliation.

Notice Requirements

There are also important notice requirements that all businesses must follow. Employers must provide a new written notice to employees, in English and in the language identified by each employee as their primary language, at the time of hire and at every annual harassment prevention training. And what is in this notice? The notice must contain the employer's sexual harassment prevention policy and the information from the sexual harassment prevention training program. The state will develop templates that employers can use. If a template isn't available in an employee's primary language, the employer must provide an English version of the notice.

Quiz: Retaliation and Supervisor's Responsibility

1. An employee is protected against retaliation for making a report of suspected harassment even if they were not the target.

- A. True
- B. False

2. Supervisors do not have to report harassment they observe if the harassed individual asks that it not be reported.

- A. True
- B. False

3. When must employers provide written notice of the sexual harassment prevention policy and training program?

- A. January 1 of each year
- B. At the time of hire
- C. During the annual harassment prevention training
- D. At the time of hire and at every annual harassment prevention training

4. Supervisors and managers are held to a high standard of behavior. This is because:

- A. Their actions can create liability for the employer without the employer having any opportunity to correct the harassment.
- B. They are required to report any harassment that is reported to them, or that they observe.
- C. They are responsible for any harassment or discrimination that they should have known of with reasonable care and attention to the workplace for which they are accountable.
- D. All of the above

Lesson 3: What Should I Do If I Am Harassed?

We cannot stop harassment in the workplace if it is not brought to the attention of the right people. It is everyone's responsibility. You are encouraged to report harassment to a supervisor, manager, or other person designated by your employer to receive complaints (as outlined in sexual harassment prevention policy) so the company can take action. Behavior does not need to be a violation of law in order to be in violation of company policy.

You should report any behavior you experience or know about that is inappropriate, as described in this training, without worrying about whether or not it is unlawful harassment. Individuals who report or experience harassment should cooperate with management so a full and fair investigation can be conducted and any necessary corrective action can be taken. If you believe that you have been subjected to sexual harassment, you are encouraged to complete an official Complaint Form and submit it to the designated person or office at your company. Ask your HR Manager or supervisor who the designated individual is, and obtain their contact information. Follow your company's policy for submitting the form.

If you are more comfortable, you may also make reports verbally. In any case, your company is still required to follow the sexual harassment prevention policy by investigating the claims. Once you report harassment, the company must follow its sexual harassment prevention policy and investigate any claims. If you report harassment to a manager or supervisor and receive an inappropriate response, such as being told to "just ignore it," you may take your complaint to the next level as we will discuss later on in this training. Finally, if you are not sure you want to pursue a complaint at the time of potential harassment, document the incident to ensure it stays fresh in your mind.

What if you witness sexual harassment? Anyone who witnesses or becomes aware of potential instances of sexual harassment should report it to a supervisor, manager, or designee. It can be uncomfortable and scary, but it is important to tell coworkers "that's not okay" when you are uncomfortable about harassment happening in front of you. It is unlawful for an employer to retaliate against you for reporting suspected sexual harassment or assisting in any investigation.



Investigation and Corrective Action

Anyone who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action, up to and including termination. The company will investigate all reports of harassment, whether information was reported in verbal or written form. An investigation of any complaint should begin immediately and be completed as soon as possible. The investigation will be kept confidential to the extent possible. Any employee may be required to cooperate as needed in an investigation of suspected sexual harassment. It is illegal for employees who participate in any investigation to be retaliated against.

The rules covering mandatory arbitration and nondisclosure agreements apply to both harassment and discrimination claims. In cases in which the complainant prefers a confidentiality agreement, it must be provided to all parties in writing in plain English and, if applicable, the complainant's primary language.

Now let's go over the investigation process. Every organization also has a duty to take appropriate steps to ensure that harassment will not occur in the future. Here's how a claim is investigated:

- A designated person will conduct an immediate review of the allegations, and take any interim actions, as appropriate
- Relevant documents, emails, or phone records will be requested, preserved, and obtained.
- Interviews will be conducted with parties involved and witnesses
- The investigation is documented as outlined in the sexual harassment policy
- The individual who complained and the individual(s) accused of sexual harassment are notified of final determination and that appropriate administrative action has been taken.

Quiz: What Should I Do If I am Harassed?

1. Behavior does not need to be a violation of the law in order to be in violation of company policy.
 - A. True
 - B. False
2. Scenario: "Paul" overheard his coworker in the break room making jokes about their new male receptionist being gay. Paul isn't sure if this constitutes as workplace harassment. What should he do?
 - A. Wait for his coworker to say something again before reporting it
 - B. Report it to a supervisor or manager immediately
 - C. Ask other coworkers in the break room their opinion
 - D. Immediately tell his coworker his jokes are not appropriate
3. To file a sexual harassment complaint, you must complete an official Complaint Form in writing.
 - A. True
 - B. False



4. Anyone who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action, up to and including termination.

- A. True
- B. False

Lesson 4: Additional Protections and Remedies

In addition to what we've already outlined, employees may also choose to pursue outside legal remedies.

New York State Division of Human Rights (DHR)

A complaint alleging violation of the Human Rights Law may be filed either with DHR or in New York State Supreme Court. Complaints may be filed with DHR any time **within three years** of the alleged sexual harassment. You do not need to have an attorney to file. If an individual did not file at DHR, they can sue directly in state court under the Human Rights Law, **within three years** of the alleged sexual harassment. An individual may not file with DHR if they have already filed a Human Rights Law complaint in state court. For more information, visit: www.dhr.ny.gov.

United States Equal Employment Opportunity Commission (EEOC)

An individual can file a complaint with the EEOC anytime **within 300 days** from the alleged sexual harassment. You do not need to have an attorney to file. A complaint must be filed with the EEOC before you can file in federal court. For more information, visit: www.eeoc.gov.

Please note: If an individual files an administrative complaint with DHR, DHR will automatically file the complaint with the EEOC to preserve the right to proceed in federal court.

Local Protections

Many localities enforce laws protecting individuals from sexual harassment and discrimination. You should contact the county, city or town in which you live to find out if such a law exists. Harassment may constitute a crime if it involves things like physical touching, coerced physical confinement, or coerced sex acts. You should also contact the local police department.

Other Types of Workplace Harassment

Workplace harassment can be based on other things, and is not just about gender or inappropriate sexual behavior in the workplace. Any harassment or discrimination based on a protected characteristic is prohibited in the workplace and may lead to disciplinary action against the perpetrator. Protected characteristics include age, race, creed, color, national origin, sexual orientation, military status, sex, disability, marital status, domestic violence victim status, gender identity, and criminal history. Much of the information presented in this training applies to all types of workplace harassment.

Summary

Thank you for completing this important training. All employees should now understand what we have discussed, including:



- How to recognize harassment as inappropriate workplace behavior
- The nature of sexual harassment
- That harassment because of any protected characteristic is prohibited
- The reasons why workplace harassment is employment discrimination
- That all harassment should be reported
- That supervisors and managers have a special responsibility to report harassment.

With this knowledge, all employees can achieve appropriate workplace behavior, avoid disciplinary action, know their rights and feel secure that they are entitled to, and can work in, an atmosphere of respect for all people.

For additional information, visit the website seen here.

www.ny.gov/programs/combating-sexual-harassment-workplace

Quiz: Additional Protections and Remedies

1. Complaints may be filed with the New York Division of Human Rights any time within _____ of the alleged sexual harassment.
 - A. 6 months
 - B. 300 days
 - C. 1 year
 - D. 3 years
2. With which agencies can you file complaints of violations of Human Rights law, including sexual harassment?
 - A. SSA and NLRB
 - B. DHR and EEOC
 - C. Secretary of State
 - D. OSHA
3. In order to file a complaint with the EEOC, you must have an attorney present.
 - A. True
 - B. False
4. Workplace harassment is not just about gender or inappropriate sexual behavior.
 - A. True
 - B. False

Case Study 1

Let's take a look at a few scenarios that help explain the kind of behaviors that can constitute sexual harassment. These examples describe inappropriate behavior in the workplace that will be dealt with by corrective action, including disciplinary action. Remember, it's up to all employees to report inappropriate behavior in the workplace.

Example 1: Not Taking “No” for an Answer

Here’s our first example, about not taking “No” for an answer.

Li Yan's coworker Ralph has just been through a divorce. He drops comments on a few occasions that he is lonely and needs to find a new girlfriend. Li Yan and Ralph have been friendly in the past and have had lunch together in local restaurants on many occasions. Ralph asks Li Yan to go on a date with him: dinner and a movie. Li Yan likes Ralph and agrees to go out with him. She enjoys her date with Ralph but decides that a relationship is not a good idea. She thanks Ralph for a nice time, but explains that she does not want to have a relationship with him. Ralph waits two weeks and then starts pressuring Li Yan for more dates. She refuses, but Ralph does not stop. He keeps asking her to go out with him.

So, here’s our first question. True or False: When Ralph first asked Li Yan for a date, this was sexual harassment.

The answer is FALSE: Ralph's initial comments about looking for a girlfriend and asking Li Yan, a coworker, for a date are not sexual harassment. Even if Li Yan had turned Ralph down for the first date, Ralph had done nothing wrong by asking for a date and by making occasional comments that are not sexually explicit about his personal life.

Now, question 2. Li Yan cannot complain of sexual harassment because she went on a date with Ralph. True or False?

This is FALSE: Being friendly, going on a date, or even having a prior relationship with a coworker does not mean that a coworker has a right to behave as Ralph did toward Li Yan. She has to continue working with Ralph, and he must respect her wishes and not engage in behavior that has now become inappropriate for the workplace.

Let’s continue this example.

Li Yan complains to her supervisor, and the supervisor (as required) reports her complaint to the person designated by her employer to receive complaints. Ralph is questioned about his behavior and he apologizes. He is instructed by the designated person to stop. Ralph stops for a while but then starts leaving little gifts for Li Yan on her desk with accompanying love notes. The love notes are not overtly offensive, but Ralph's behavior is starting to make Li Yan nervous, as she is afraid he may start stalking her.

Now let’s stop for another question. Question 3. Ralph's subsequent behavior with gifts and love notes is not sexual harassment because he has stopped asking Li Yan for dates as instructed. He is just being nice to Li Yan because he likes her. True or False?

This is FALSE: Li Yan should report Ralph's behavior. She was entitled to have effective assistance in getting Ralph to stop his inappropriate workplace behavior. Because Ralph has returned to pestering Li Yan after being told to stop, he could be subject to serious disciplinary action for his behavior.

Quiz: Case Study 1

1. When Ralph first asked Li Yan for a date, this was sexual harassment.
 - A. True
 - B. False
2. Ralph stops harassing Li Yan for a while but then starts leaving little gifts for her on her desk with accompanying love notes. The love notes are not overtly offensive, but Ralph's behavior is starting to make Li Yan nervous, as she is afraid, he may start stalking her. This is still sexual harassment.
 - A. True
 - B. False
3. If Li Yan had never gone on a date with Ralph, but Ralph continued to pressure her for a date, would that be considered sexual harassment?
 - A. Yes
 - B. No
4. If the gender roles were flipped and the same story played out, would this still be considered sexual harassment?
 - A. Yes
 - B. No

Case Study 2

Example 2: The Boss with a Bad Attitude

Now we're going to shift to a different example.

Sharon transfers to a new location with her employer. Her new supervisor, Paul, is friendly and helps her get familiar with her new job duties. After a few days, when no one else is around, Paul comes over to Sharon's work area to chat. Paul talks about what he did last night, which was to go to a strip club. Sharon is shocked that Paul would bring up such a topic in the workplace and says nothing in response. Paul continues talking and says that all the women in the office are so unattractive that he needs to get out and "see some hot chicks" once in a while. He tells Sharon he is glad she joined the staff because, unlike the others, she is "easy on the eyes." Sharon feels very offended and demeaned that she and the other women in her workplace are being evaluated on their looks by their supervisor.

Ok, now for question number 1: Because Paul did not tell Sharon that she is unattractive, he has not harassed her. True or False?

The answer is, FALSE: Paul has made sexually explicit statements to Sharon, which are derogatory and demeaning to Sharon and her female coworkers. It does not matter that Paul supposedly paid Sharon a "compliment." The discussion is still highly offensive to Sharon, as it would be to most reasonable persons in her situation.

Next question, question 2. By bringing up his visit to the strip club, Paul is engaging in inappropriate workplace behavior. True or False?

TRUE: Simply bringing up the visit to the strip club is inappropriate in the workplace, especially by a supervisor, and it would be appropriate for Sharon to report this conduct. A one-time comment about going to a strip club is behavior that Paul would be told to stop, even though it probably would not rise to the level of unlawful harassment, unless it was repeated on multiple occasions.

Finally, question 3. Paul should be instructed to stop making these types of comments, but this is not a serious matter. True or False?

This is FALSE: Paul's comments about the female employees are a serious matter and show his contempt for women in the workplace. Paul is required to model appropriate behavior, and must not exhibit contempt for employees on the basis of sex or any protected characteristic. Sharon should not have to continue to work for someone she knows harbors such contempt for women, nor should the other employees have to work for such a supervisor. Management should be aware of this, even if the other employees are not, and Paul should be disciplined and, most likely, removed from his current position.

Quiz: Case Study 2

1. Paul talking about his visit to the strip club is NOT inappropriate workplace behavior.
 - A. True
 - B. False
2. Paul is complimenting Sharon, NOT harassing her.
 - A. True
 - B. False
3. If Paul had not told Sharon she was “easy on the eyes,” it would have not constituted sexual harassment.
 - A. True
 - B. False
4. Because Paul is Sharon’s direct supervisor, she cannot file complaints directly against him.
 - A. True
 - B. False

Case Study 3

Example 3: No Job for a Woman?

Now for our third example.

Carla works as a licensed heavy equipment operator. Some of her male coworkers think it is fun to tease her. Carla often hears comments like, “Watch out, here she comes, that crazy woman driver!”



in a joking manner. Also, someone keeps putting a handmade sign on the only port-a-potty at the worksite that says, "Men only."

Question number 1. Women in traditionally male jobs should expect teasing and should not take the joking comments too seriously. True or False?

FALSE: Whether Carla is being harassed depends in part on Carla's opinion of the situation; that is, whether she finds the behavior offensive. However, if at any point Carla does feel harassed, she is entitled to complain of the behavior and have it stopped, regardless of whether and for how long she has endured the behavior without complaint. Carla can always say when enough is enough.

Ok, now question 2. Carla cannot complain, because the site supervisor sometimes joins in with the joking behavior, so she has nowhere to go. True or False?

This is also FALSE: Carla can still complain to the supervisor who is then on notice that the behavior bothers Carla and must be stopped. The supervisor's failure to take Carla's complaint seriously constitutes serious misconduct on his or her part. Carla can also complain directly to the person designated by her employer to receive complaints, either instead of going to the supervisor, or after doing so. The employer is responsible for assuring that all employees are aware of its anti-harassment policies and procedures.

Let's keep going with this example.

Some of Carla's other coworkers are strongly opposed to her presence in the traditionally all-male profession. These coworkers have sometimes said things to her like, "You're taking a job away from a man who deserves it," "You should be home with your kids," and "What kind of a mother are you?" Also, someone scratched the word "bitch" on Carla's toolbox.

So question 3. These behaviors, while rude, are not sexual harassment because they are not sexual in nature. True or False?

The answer is, FALSE: The behaviors are directed at her because she is a woman and appear to be intended to intimidate her and cause her to quit her job. While not sexual in nature, this harassment is because of her sex and will create a hostile work environment if it is sufficiently severe or frequent.

Back to Carla one more time.

Carla complains about the jokes and other behaviors, and an investigation is conducted. It cannot be determined who defaced Carla's toolbox. Her coworkers are told to stop their behavior or face disciplinary charges. The supervisor speaks with Carla and tells her to come to him immediately if she has any further problems. Carla then finds that someone has urinated in her toolbox.

Final question, question number 4. There is nothing Carla can do because she can't prove who vandalized her toolbox. True or False?

FALSE: Carla should speak to her supervisor immediately, or contact any other person designated by her employer to receive complaints directly. Although the situation has become very difficult, it is the employer's responsibility to support Carla and seek a solution. An appropriate investigation must be promptly undertaken and appropriate remedial action must follow.



Quiz: Case Study 3

1. Women in traditionally male jobs should expect teasing and should not take the joking comments too seriously.
 - A. True
 - B. False
2. Carla's coworkers are told to stop their behavior or face disciplinary charges. The supervisor speaks with Carla and tells her to come to him immediately if she has any further problems. Carla then finds that someone has urinated in her toolbox. What can she do?
 - A. Investigate who urinated in her toolbox before accusing anyone.
 - B. Take the law into her own hands and damage her coworker's toolboxes.
 - C. Speak with her supervisor immediately.
 - D. Nothing, she can't prove who vandalized her toolbox.
3. This case study is an example of what type of sexual harassment?
 - A. Sex Stereotyping
 - B. Hostile Environment
 - C. Retaliation
 - D. Quid Pro Quo
4. Since Carla has already complained to her supervisor, what other options does she have?
 - A. Contact any other person designated by her employer to receive complaints
 - B. File a complaint with the New York State Division of Human Rights
 - C. File a complaint with the EEOC
 - D. Any of the above

Case Study 4

Example 4: Too Close for Comfort

Here's our next case study.

Keisha has noticed that her new boss, Sarah, leans extremely close to her when they are going over the reports that she prepares. She touches her hand or shoulder frequently as they discuss work. Keisha tries to move away from her in these situations, but she doesn't seem to get the message.

Question 1. Keisha should just ignore Sarah's behavior. True or False?

FALSE: If Keisha is uncomfortable with Sarah's behavior, she has options. If she feels comfortable doing so, she should tell Sarah to please back off because her closeness and touching make her uncomfortable. Another option is to complain directly to a person designated by her employer to receive complaints, who will speak with Sarah. There is no valid reason for Sarah to engage in this behavior.

Back to our example.

Before Keisha gets around to complaining, Sarah brushes up against her back in the conference room before a meeting. She is now getting really annoyed but still puts off doing anything about it. Later Sarah “traps” Keisha in her office after they finish discussing work by standing between her and the door of the small office. Keisha doesn't know what to do, so she moves past her to get out. As she does so, Sarah runs her hand over Keisha’s breast.

So here’s our next question: Sarah’s brushing up against Keisha in the conference room could just be inadvertent and does not give Keisha any additional grounds to complain about Sarah. True or False?

This is FALSE: Sarah is now engaging in a pattern of escalating behavior. Given the pattern of her “too close” and “touching” behavior, it is unlikely that this was inadvertent. Even before being “trapped” in Sarah’s office, Keisha should have reported all of the behaviors she had experienced that had made her uncomfortable.

One last question for this example. Sarah touching Keisha’s breast is inappropriate but is probably not unlawful harassment because it only happened once. True or False?

The answer is, FALSE: Any type of sexual touching is very serious and does not need to be repeated to constitute sexual harassment. Keisha should immediately report it without waiting for it to be repeated. Sarah can expect to receive formal discipline, including possible firing.

Quiz: Case Study 4

1. Keisha should ignore Sarah’s behavior, she is just being nice to her.
 - A. True
 - B. False
2. After all the incidents discussed in the case study, Keisha is feeling harassed—but she also doesn’t want to cause problems with her new boss. What can she do?
 - A. Ignore the behavior and try not to make a big deal about it.
 - B. Explore a relationship with Sarah and see what happens.
 - C. She should immediately report it without waiting for it to be repeated.
 - D. Nothing, she can’t prove any of those situations happened, there were no witnesses.
3. This case study is an example of hostile environment sexual harassment.
 - A. True
 - B. False
4. Sarah touching Keisha’s breast just one time could result in firing.
 - A. True
 - B. False

Case Study 5

Example 5: A Distasteful Trade

The following scenario will explain many aspects of quid pro quo sexual harassment.

Tatiana is hoping for a promotion to a position that she knows will become vacant soon. She knows that her boss, David, will be involved in deciding who will be promoted. She tells David that she will be applying for the position, and that she is very interested in receiving the promotion. David says, "We'll see. There will be a lot of others interested in the position."

A week later, Tatiana and David travel together for business, including an overnight hotel stay. Over dinner, David tells Tatiana that he hopes he will be able to promote her, because he has always really enjoyed working with her. He tells her that some other candidates "look better on paper" but that she is the one he wants. He tells her that he can "pull some strings" to get her into the job and Tatiana thanks David. Later David suggests that they go to his hotel room for "drinks and some relaxation." Tatiana declines his "offer."

Question 1. David's behavior could be harassment of Tatiana. True or False?

This is TRUE: David's behavior as Tatiana's boss is inappropriate, and Tatiana should feel free to report the behavior if it made her uncomfortable. It is irrelevant that this behavior occurs away from the workplace. Their relationship is that of supervisor and supervisee, and all their interactions will tend to impact the workplace.

David's behavior, at this point, may or may not constitute quid pro quo harassment; David has made no threat that if Tatiana refuses his advance he will handle her promotion any differently. However, his offer to "pull some strings" followed by a request that they go to his hotel room for drinks and relaxation might be considered potentially coercive. Certainly, if David persists in his advances, even if he never makes or carries out any threat or promise about job benefits, then this could create a hostile environment for Tatiana, for which the employer could be strictly liable because David is a management employee.

Let's continue this example.

After they return from the trip, Tatiana asks David if he knows when the job will be posted so that she can apply. He says that he is not sure, but there is still time for her to "make it worth his while" to pull strings for her. He then asks, "How about going out to dinner this Friday and then coming over to my place?"

Now for question 2. David engaged in quid pro quo harassment. True or False?

TRUE: It is now evident that David has offered to help Tatiana with her promotion in exchange for sexual favors.

So let's keep the story going.

Tatiana, who really wants the position, decides to go out with David. Almost every Friday they go out at David's insistence and engage in sexual activity. Tatiana does not want to be in a relationship with David and is only going out with him because she believes that he will otherwise block her promotion.

Our third question is this: Tatiana cannot complain of harassment, because she voluntarily engaged in sexual activity with David. True or False?

This is FALSE: Because the sexual activity is unwelcome to Tatiana, she is a victim of sexual harassment. Equally, if she had refused David's advances, she would still be a victim of sexual harassment. The offer to Tatiana to trade job benefits for sexual favors by someone with authority over her in the workplace is quid pro quo sexual harassment, and the employer is exposed to liability because of its supervisor's actions.

Now, let's say Tatiana receives the promotion.

So question 4. Tatiana cannot complain of harassment because she got the job, so there is no discrimination against her. True or False?

The answer is, FALSE: Tatiana can be the recipient of sexual harassment whether or not she receives the benefit that was used as an inducement.

So let's conclude our story.

Tatiana breaks off the sexual activities with David. He then gives her a bad evaluation, and she is removed from her new position at the end of the probationary period and returns to her old job.

Question 5. It is now "too late" for Tatiana to complain. Losing a place of favor due to the breakup of the voluntary relationship does not create a claim for sexual harassment. True or False?

This statement is FALSE: It is true that the breakup of a relationship, if truly consensual and welcomed at the time, usually does not create a claim for sexual harassment. However, the "relationship" in this case was never welcomed by Tatiana. David's behavior has at all times been inappropriate and a serious violation of the employer's policy. As the person who abused the power and authority of a management position, David has engaged in sexual harassment.

Quiz: Case Study 5

1. When David suggests that they go to his hotel room for "drinks and some relaxation," that invitation is NOT considered sexual harassment since it was not at the workplace.

- A. True
- B. False

2. Tatiana breaks off the sexual activities with David. He then gives her a bad evaluation, and she is removed from her new position at the end of the probationary period and returns to her old job. Tatiana feels like it is now "too late" for Tatiana to complain. What can she do?

- A. Nothing, it is now too late to complain
- B. Try to get back with David and continue their relationship
- C. Submit a complaint to the HR department. David's behavior has at all times been inappropriate and a serious violation of the employer's policy.
- D. Let everyone know in the workplace that David took advantage of her, make it a scandal.

3. If Tatiana had rejected David's advances and not gotten the promotion, would this still be considered sexual harassment?

- A. True
- B. False

4. When David retaliated against Tatiana by giving her a bad evaluation, this was an example of quid pro quo harassment.

- C. True
- D. False

Case Study 6

Example 6: An Issue About Appearances

Now it's time for our final case study.

Leonard works as a clerk typist for a large employer. He likes to wear jewelry, and his attire frequently includes earrings and necklaces. His boss, Margaret, thinks it's "weird" that, as a man, Leonard wears jewelry and wants to be a clerical worker. She frequently makes sarcastic comments to him about his appearance and refers to him "jokingly" as her office boy. Leonard, who hopes to develop his career in the area of customer relations, applies for an open promotional position that would involve working in a "front desk" area, where he would interact with the public. Margaret tells Leonard that if he wants that job, he had better look "more normal" or else wait for a promotion to mailroom supervisor.

So here's our first question. Leonard's boss is correct to tell him wearing jewelry is inappropriate for customer service positions. True or False?

The correct answer is, FALSE: Leonard's jewelry is only an issue because Margaret considers it unusual for a man to wear such jewelry. Therefore, her comments to Leonard constitute sex stereotyping.

Now let's continue this story.

Margaret also is "suspicious" that Leonard is gay, which she says she "doesn't mind," but she thinks Leonard is "secretive." She starts asking him questions about his private life, such as "Are you married?" "Do you have a partner?" "Do you have kids?" Leonard tries to respond politely "No" to all her questions but is becoming annoyed. Margaret starts gossiping with Leonard's coworkers about his supposed sexual orientation.

Alright, question 2. Leonard is the recipient of harassment on the basis of sex and sexual orientation. True or False?

This is TRUE: Leonard is harassed on the basis of sex because he is being harassed for failure to adhere to Margaret's sex stereotypes.

Leonard is also harassed on the basis of his perceived sexual orientation. It does not matter whether or not Leonard is a gay man in order for him to have a claim for sexual orientation harassment.

Leonard might also be considered a target of harassment on the basis of gender identity, which is a form of sex and/or disability discrimination prohibited by the Human Rights Law. Leonard should report Margaret's conduct, which is clearly a violation of the sexual harassment policy, to a person designated by his employer to receive complaints (i.e., his employer's "designee").

Let's finish this scenario.

Leonard decides that he is not going to get a fair chance at the promotion under these circumstances, and he complains to the employer's designee about Margaret's behavior. The designee does an investigation and tells Margaret that Leonard's jewelry is not in violation of any workplace rule, that she is to consider him for the position without regard for his gender, and that she must stop making harassing comments, asking Leonard intrusive questions, and gossiping about his personal life. Margaret stops her comments, questions, and gossiping, but she then recommends a woman be promoted to the open position. The woman promoted has much less experience than Leonard and lacks his two-year degree in customer relations from a community college.

So for our third and final question: Leonard has likely been the target of discrimination on the basis of sex, sexual orientation and/or retaliation. True or False?

TRUE: We don't know Margaret's reason for not recommending Leonard for the promotion, but it is not looking good for Margaret. It appears that she is either biased against Leonard for the same reasons she harassed him, or she is retaliating because he complained, or both.

Leonard should speak further with the employer's designee, and the circumstances of the promotion should be investigated. If it is found that Margaret had abused her supervisory authority by failing to fairly consider Leonard for the promotion, she should be subject to disciplinary action. This scenario shows that sometimes more severe action is needed in response to harassment complaints, in order to prevent discrimination in the future.

Quiz: Case Study 6

1. When Margaret tells Leonard that if he wants that job, he had better look "more normal" or else wait for a promotion to mailroom supervisor, make Leonard feel harassed, what should he do?

- A. Nothing. Leonard's boss is correct to tell him wearing jewelry is inappropriate for customer service positions
- B. He should report the incident immediately. Her comments to Leonard constitute sex stereotyping.
- C. He should follow the advice and change his attire to look "more normal."
- D. Try to convince Margaret to like his style, be friendlier to convince her to like him more and give him the promotion.

2. When Margaret asks him questions about his private life, such as "Are you married?" "Do you have a partner?" "Do you have kids?" Leonard tries to respond politely "No" to all her questions but is becoming annoyed. Margaret starts gossiping with Leonard's coworkers about his supposed sexual orientation. This is NOT an example of sexually harassment.

- A. True
- B. False



3. Jokes, comments, and gossip about someone performing a job that is usually performed, or was performed in the past, mostly by persons of a different sex, is considered harassment.

- A. True
- B. False

4. Does Leonard's actual sexual orientation matter with regards to whether or not this is sexual harassment?

- A. Yes
- B. No