Workplace & Sexual Harassment

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Agenda

Brief Assessment
Rose-Hulman Policy
Definition of Workplace & Sexual Harassment
Reporting Procedure
Investigation Procedure
Summary
Hey, Baby, if I told you that you had a nice set of feelers, would you hold 'em against me?

CHOMP!

MUNCH MUNCH MUNCH

The consequences of sexual harassment in the insect world
Course Objectives

After completing this session, you will be able to:

✓ Define workplace & sexual harassment.
✓ Identify behaviors that may be interpreted as workplace or sexual harassment.
✓ Apply laws and Institute policy prohibiting harassment in the workplace.
✓ Understand your (employee) responsibility
✓ Report workplace and sexual harassment.
Why is the Institute, as your employer, concerned about Harassment?

Why should you, as an employee, be concerned?
Title VII of the Civil Rights Act

UNLAWFUL EMPLOYMENT PRACTICES
SEC. 2000e-2. [Section 703] (a) It shall be an unlawful employment practice for an employer -
(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
Title VII of Civil Rights Act

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.
A copy of the Rose-Hulman Institute of Technology Workplace and Sexual Harassment policy and the Resolution form is included in your handouts. We will review this policy and the resolution form at the end of our session.
Not JUST Sexual Harassment

What other groups are protected?
Not JUST Sexual Harassment

The Law also prohibits harassment based on

- Race
- National Origin
- Age
- Pregnancy
- Disability
- Veteran Status
- Religion
- Sexual Orientation (not law- RHIT policy)
An employee decides to solicit co-workers to attend her church. This would be an acceptable workplace practice.

**True or False**

What if the President were to distribute specific religious brochures to all employees?
What is Workplace Harassment?

• Any unwelcome verbal, written or physical conduct that either denigrates or shows hostility or aversion towards a person on the basis of race, gender, color, national origin, religion, sexual orientation, age, veteran status, or disability.
What is Workplace Harassment?

• The harassment has the purpose or effect of creating an intimidating, hostile or offensive work environment or may interfere with opportunities impacting employment, academic progress, evaluation, wages, advancement, assigned duties, shifts, or any other condition of employment or academic development.
Local company named in lawsuit because of workplace harassment.

*Bemis Co., Inc. in Terre Haute was sued for workplace harassment. See handout.*
See Question 1 On Handout
What is Workplace Harassment?

✓ Behavior which has the effect of humiliating, intimidating, or coercing someone through personal attack.

✓ Behavior that can cause the recipient to be embarrassed, uncomfortable and cause emotional distress.
Unlawful Workplace Harassment

- Racial or religious slurs or insults
- Ethnic jokes
- Intimidation
- Displays of pictures or other materials that imply prejudicial attitudes or are offensive to co-workers
Unlawful Workplace Harassment

✓ Ridiculing a person because of his/her lifestyle.
✓ Pressuring a person to listen to information about or accept a particular religious belief.

Do you think there is a difference between whether it is done in the work area or on break or lunch?
How About You?

Looking back, do you think you may have been times that you acted inappropriately in the workplace?

Is an act that is seen as unfair, harassment?
Sexual Harassment and the Law


The U.S. Supreme Court rules that sexual harassment violates Title VII prohibitions against sex discrimination in employment, and does not have to cause tangible economic harm to be actionable. It defined a hostile environment and delineated between voluntariness and welcomeness.
What is Sexual Harassment?

- Title VII and EEOC guidelines define sexual harassment generally as *unwelcome* sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.
Types of Sexual Harassment

• Quid Pro Quo (this for that)
  ✓ Federal law recognizes two different sets of legal grounds for claiming sexual harassment under Title VII. The first is *quid pro quo*. Under the *quid pro quo* form of harassment, a person in authority, usually a supervisor, demands sexual favors of a subordinate as a condition of getting or keeping a job benefit.
Examples of Quid Pro Quo

- Demanding sexual favors in exchange for a promotion or a raise
- Disciplining or discharging an employee who ends a romantic relationship
- Changing job performance expectations after subordinate refuses repeated requests for a date

Quid pro quo claims have decreased and are now rare.
Types of Sexual Harassment

- Hostile Work Environment
  - Severe and pervasive conduct
  - Unreasonable interference with an individual’s job performance
  - Offensive, intimidating, hostile work environment
  - Can be created by anyone (not just a supervisor) in the workplace
See Question 2 On Handout
Hostile Work Environment

- In 1998, the U.S. Supreme Court held in the *Faragher* and *Ellerth* cases that: Hostile work environment harassment requires “severe or pervasive” conduct and results in no liability if employer can prove this defense:

  (1) it exercised reasonable care to prevent and correct harassment; and
Hostile Work Environment

(2) victim failed to take advantage of any preventive/corrective opportunities provided by employer or otherwise failed to avoid harm.

What does this mean to you?
Employee is Responsible

Employees bear the responsibility for notifying their employers about harassment if they have access to an effective, credible internal complaint process.
Hostile Work Environment

- **Hostile work environment and retaliation claims have increased**
  
  1997 – 23,047  
  2008 – 32,535 (EEOC)

- Employees may believe anything that is not fair is illegal and often file claims of “unfairness” rather than “unlawfulness.”

- **Employees don’t understand their own obligations to avoid being harassed.**
Examples of behaviors that create a hostile environment

✓ Off-color jokes or teasing

✓ Comments about body parts or sex life

✓ Suggestive or demeaning pictures, posters, calendars or cartoons
Examples of behaviors that create a hostile environment

- Leering, staring, or gesturing
- **Repeated** requests for dates
- Touching—brushes, pats, hugs, pinches
- Assault
Reasonable Woman Standard

✓ The “reasonable woman” standard acknowledges that what a reasonable man and a reasonable woman would find intimidating are often different.
✓ By their nature, men and women can easily view the same situation from different perspectives.
Reasonable Woman Standard

Ellison v. Brady

✓ Men and women have very different views of the conduct that may constitute sexual harassment

✓ Women are more frequently targeted by sexual violence
Reasonable Woman Standard

“We therefore prefer to analyze harassment from the victim's perspective. A complete understanding of the victim's view requires, among other things, an analysis of the different perspectives of men and women. Conduct that many men consider unobjectionable may offend many women.”
Unwelcome

✓ When any unwanted, unwelcome, or unsolicited conduct is imposed on a person who regards it as offensive or undesirable, it is harassment.

✓ When a person communicates that the conduct is unwelcome, it becomes illegal. Even if the conduct is not stated but implied, as long as it is unwelcome it is unlawful.
Same-Sex

In 1998 the Supreme Court stated that same-sex harassment is illegal. It is no more acceptable to harass those of the same sex than it is to harass those of the opposite sex.
Non-Employee

✓ Harassment by a non-employee, such as a vendor, customer, client, visitor.

Do you think the employer has an obligation to protect against this type of harassment?
The Cost of Harassment

✓ Increased turnover
✓ Increased costs for recruiting & training
✓ Decreased morale
✓ Decreased employee productivity
✓ A harasser can lose his/her job
The Cost of Harassment

- Acting outside the course and scope of employment, the harasser can be held personally liable and be sued affecting employability and credit worthiness
- The Institution can be sued and can lose federal funding
- Attorney fees (both yours and theirs)
- Increased liability insurance fees
To Protect Yourself Against Charges of Harassment

✓ Keep your hands to yourself.
✓ Don’t talk about sex on the job.
✓ Keep compliments casual and fairly impersonal.
To Protect Yourself Against Charges of Harassment

✓ Don’t assume that a friendly woman/man will be willing to go to bed with you. Assume only that friendly people are friendly.

✓ Respect a person’s personal space.
Does the Conduct Rise to the Level of Actionable Harassment

✓ The frequency of the conduct**;
✓ The nature and severity of the conduct;
✓ Whether the conduct complained of was repeated;
✓ Whether the conduct complained of was physically threatening;
✓ The effect of the conduct on the complainant’s mental or emotional state
Does the Conduct Rise to the Level of Actionable Harassment

✓ Whether others joined in the conduct;
✓ Whether the conduct unreasonably interfered with the complainant’s work performance.
✓ Are there policies and procedures in place for harassment complaints?
Single Episode

**A single episode can be illegal harassment (as well as a policy violation) if:

- ✔ Severe
- ✔ Unusually demeaning
- ✔ Physical, particularly where threatening
Appropriate or Inappropriate?

✓ Asking a coworker for a date
✓ Giving a coworker a gift after he/she helped you out (a CD, bubble bath, gift certificate, a book or magazine, flowers)
✓ Discussing a date you had
✓ A hug on a bad day
✓ A swat on the butt
Appropriate or Inappropriate?

✓ Complimenting a coworker on clothes?
✓ Recent weight loss?
✓ Imitating a coworker’s accent
✓ Calling an older worker “pops” out of friendship
✓ Rubbing a pregnant co-worker’s stomach (baby)
Appropriate or Inappropriate?

- Asking for an explanation about Jewish holiday traditions
- Telling jokes about your own religion
- Quietly attempting to convert your coworkers to your religion
Retaliation

✓ Retaliation occurs when a harassment victim suffers a *negative action* as a result of the harassment.
✓ The law protects employees from retaliation
✓ Institute policy prohibits retaliation
Who Decides?
The Reasonable Person

Objective + Subjective

☑ Would a reasonable person,
☑ In the employee’s position,
☑ Considering all the circumstances,

Find working conditions to be:

☑ Hostile
☑ Offensive
☑ Abusive
See Question 3 on Handout
What Should You Report?

- Policy violations that happen to you
- Policy violations that you observe
- Policy violations that you did not observe, but about which you have credible information
Resources for Reporting

Director of Human Resources
Kimberly Miller – 877-8176

A member of the Ombudsman Committee
(these members change every two years)
Rick Ditteon, 877-8247, Faculty Rep.
Erik Hayes, 877-8230, Staff Rep.

Your supervisor, manager, director, Area VP
Resources for Reporting

Area Vice President/Dean
Rob Coons, 877-8246
Jim Goecker, 877-8894
Pete Gustafson, 877-8257
Donald Fry, 877-8211
Dr. Art Western, 877-8337
What Would You Do?

You overhear two employees talking about their sexual conquests?

You see an employee looking at a porno web site?

You receive a sexual joke as an e-mail attachment?
Questions