

Preventing Sexual Harassment in the Workplace

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Lindsay A. Menasco, Esq.
Hodgson Russ LLP

Albany | Buffalo | Hackensack | New York City | Palm Beach | Rochester | Saratoga Springs | Toronto
www.hodgsonruss.com | www.hodgsonruss.ca



Title IX & Sexual Harrassment
Mandatory Training



Opening Days 2022



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Agenda

- Sexual Harassment is Prohibited
- Reporting and Investigating Complaints
- Retaliation is Prohibited
- Additional Protections and Remedies
- Sexual Harassment Case Studies
- Closing Remarks and Best Practices

Content note: This training will include information about harassment and assault.

Discrimination and Harassment are Prohibited

Certain conduct that may seem acceptable to you, or may have seemed acceptable in the past, does not mean it is acceptable to the people we work with or is acceptable now.

The Goal: A Respectful Workplace

- The District strives to create and maintain a respectful workplace.
- Building Blocks of a respectful workplace:
 - Appreciating Diversity;
 - Accepting Differences;
 - Equality.
- The District has adopted a Non-Discrimination and Anti-Harassment in the School District Policy (#3420), Sexual Harassment in the Workplace Policy (#6121), and other related policies and regulations that embody this commitment.



Unlawful Discrimination and Harassment

The District strictly prohibits and will not tolerate any form of unlawful discrimination or harassment in the workplace.

- Unlawful discrimination occurs when an employee is *treated differently* because of a protected classification or characteristic.
- Unlawful harassment occurs when an employee is *subjected to a hostile work environment* because of a protected classification or characteristic.

Protected Classifications

- Race
- Color
- Creed
- Religion
- Sex
- Sexual Orientation
- Gender Identity and Expression
- National Origin
- Alienage/Citizenship
- Age
- Disability
- Marital Status
- Familial Status
- Military Status
- Partnership Status
- Caregiver Status
- Domestic Violence Victim Status
- Predisposing Genetic Characteristics

**Note: Hair Discrimination Legislation (CROWN Act)

Sexual Harassment Definition

- Sexual harassment is a form of gender discrimination.
- Includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity, and the status of being transgender.
- Sexual harassment is unlawful when it subjects an individual to inferior terms, conditions, or privileges of employment.
 - *Exception:* not unlawful if the conduct does not rise above the level of what a reasonable victim of harassment with the same protected characteristic would consider petty slights or trivial inconveniences.
 - Under New York State law, harassment no longer needs to be “severe or pervasive” to be unlawful.

Sexual Harassment Definition – Cont'd

- Sexual harassment includes unwelcome conduct which is either:
 - Of a sexual nature; or
 - Directed at an individual because of that individual's sex when:
 - Submission to conduct is made (either explicitly or implicitly) a term or condition of an individual's employment.
 - Submission to or rejection of such conduct by an individual is used as the basis for employment decisions effecting such individual.
 - 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.

Sexual Harassment Definition, Cont'd.

- **Quid Pro Quo Sexual Harassment (“this for that”):**
 - Threatening action usually between supervisor and subordinate where sexual favors are demanded or retaliation such as demotion or termination is implied.
 - Includes:
 - Offering or granting better working conditions or opportunities in exchange for a sexual relationship;
 - 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; or
 - Retaliating for refusing to engage in a sexual relationship.

Sexual Harassment Definition, Cont'd.

- **Hostile Work Environment Sexual Harassment:**
 - Supervisor, co-worker or another who has contact “on the job” creates an intimidating, hostile work environment; interferes with work performance through word/deeds related to victim’s gender.
 - The working environment is so sexually polluted that it interferes with the psychological wellbeing of the employee.



Sexual Harassment Examples, Cont'd.

- Unwanted sexual advances, propositions or other sexual comments, such as:
 - Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion, or other job benefits or detriments;
 - Subtle or obvious pressure for unwelcome sexual activities; or
 - Sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience which rise above "petty slights or trivial inconveniences" create a hostile work environment.



Sexual Harassment Examples, Cont'd.

- Sexual or discriminatory displays or publications anywhere in the workplace, such as displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials, 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.



Sexual Harassment Examples, Cont'd.

- Physical acts of a sexual nature, such as:
 - Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body, or poking another employee's body; or
 - Rape, sexual battery, molestation, or attempts to commit these assaults.
 - **NOTE:** This type of conduct may also be criminal.

Sexual Harassment Examples, Cont'd.

- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity, or status of being transgender, such as:
 - 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; or
 - Bullying, yelling, or name-calling (in person, in writing, or electronically).

Sexual Harassment Examples, Cont'd.

- Sex stereotyping: 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 a particular sex should act or look.
- Includes:
 - Harassing a person because that person does not conform to gender stereotypes as to "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.

Sexual Harassment

Because boundaries are difficult to mark, best course of action is to **AVOID** any conduct that could be interpreted as sexual or sexually offensive in the workplace.

STOP

Determining “Unwelcome” Conduct

- Individuals can express that conduct is unwelcome in a number of ways.
 - Verbally
 - Express
 - Implied (e.g., “maybe,” making excuses)
 - Body language
 - Tone of voice
- Be aware of non-verbal cues that may communicate to you that your conduct is unwelcome to another individual.

Sexual Harassment FAQs

Who can be a harasser?

- Co-workers
- Supervisors
- Student
- Parents
- Vendors
- Individuals or groups doing business with the District or on the premises

Sexual Harassment FAQs, Cont'd.

How can I tell if it is sexual harassment or just a person being overly friendly? Who decides if an act constitutes sexual harassment?

- Standard: whether the individual is subjected to inferior terms, conditions or privileges of employment because of the individual's membership in one or more protected class.
- Harasser's intent is irrelevant.
- Sexual harassment may be unlawful even if unintentional and even if it is not motivated by sexual desire.

Sexual Harassment FAQs, Cont'd.

Is it sexual harassment if my coworker or supervisor is mean to me?

- No; there's no law against having a mean boss or co-worker.
- But, sexual statements or abuse of women or men can be a different story.



Sexual Harassment FAQs, Cont'd.

Can sexual harassment occur by a person of the same sex?

- Yes!
- Simply because the alleged harasser and the victim are the same gender does not mean that sexual harassment cannot occur.
- Men can be guilty of harassing men, and women can be guilty of harassing women.

Sexual Harassment FAQs, Cont'd.

Does the harassment have to come from an employee of my employer (coworker or supervisor) to be actionable?

- No!
- Employers have an obligation to their employees to provide a workplace free of unlawful harassment and discrimination – regardless of the identity of the harasser.
- For example, an employee of an outside contractor can be a sexual harasser.

Sexual Harassment FAQs, Cont'd.

Can actionable harassment occur outside of work hours or the workplace?

- Yes!
- Conduct that occurs at the workplace during non-work hours (e.g., in the faculty room during prep periods) can still be considered harassing and unlawful.
- In fact, if the conduct occurs off-site but at a district-sponsored event or if the conduct otherwise has a nexus to the workplace, it is likely to be considered within the scope of the employee's employment.

Sexual Harassment FAQs, Cont'd.

Is it possible to have “unintended” sexual harassment?

- Yes!
- There is no intent requirement.
- Remember: conduct that may be considered funny among friends and/or outside the workplace can be offensive, and even unlawful, when brought into work.
- Moreover, conduct need not be directed at a particular individual in order to be considered unlawful harassment. Overheard remarks can qualify!

Sexual Harassment FAQs, Cont'd.

What about consensual relationships?

- Consensual relationships between co-workers are not harassment.
 - Welcomed conduct – but be careful because one could cross a line very easily!
 - Also remember that consensual relationships can change (or even potentially be re-characterized after the fact) and end up as unwanted harassment at a later date.

What Is Not Harassment or Discrimination

- It is not unlawful to treat employees differently based upon legitimate, non-discriminatory reasons (e.g., work performance).
- It is not harassment or discrimination for supervisors or district/building leaders to manage – or even “micro-manage” – their subordinates on an even-handed basis.
- It is not harassment or discrimination for supervisors or district/building leaders to request/direct all of their employees to perform work tasks within their job description.
 - But treating individuals differently or harassing anyone based on any protected characteristic is unlawful under federal and state anti-discrimination and anti-harassment laws.

Reporting and Investigation of Sexual Harassment Complaints

Preventing unlawful conduct is everyone's responsibility.

Reporting Of Complaints

- The District cannot stop harassment or discrimination in the workplace unless it knows about it.
- An employee who is subjected to, or observes, conduct he or she believes may be discrimination or harassment is strongly encouraged to report it immediately to a supervisor, building principal, other administrator, or the Civil Rights Compliance Officer.
- A Complaint Form is available on the District's website under the "Documents & Plans" tab. All employees are encouraged to use this form and access those referenced policies.

Supervisors' Responsibilities

- Individuals with supervisory authority **must** report any discrimination or harassment that they observe or know of, even if no one is objecting to the conduct.
- If a supervisor receives a report of discrimination or harassment, or is otherwise aware of the harassment, it **must** be promptly reported to the District's Civil Rights Compliance Officer, without exception.
 - Even if the supervisor thinks the conduct is trivial and/or even if the harassed individual asks that it not be reported.
- Supervisors will be subject to discipline for failing to report suspected discrimination or harassment or otherwise knowingly allowing it to continue.
- Supervisors will also be subject to discipline for engaging in any unlawful retaliation.

Investigation Of Complaints

- The District will promptly and thoroughly investigate any report of discrimination or harassment received.
- Investigation will be kept confidential to the extent possible.
- All employees are expected and required to fully cooperate with any investigation.



Investigation Of Complaints, Cont'd

- While the process may vary from case to case depending on the circumstances, an investigation of a report of discrimination or harassment, or other violation of District policy, will generally include the following steps:
 - An immediate review of the allegations will be conducted and interim action may be taken, as appropriate.
 - Relevant documents and electronic communications will be collected and reviewed.
 - The complainant, witness(es), and accused will be interviewed.
 - Confidential written documentation of the investigation will be created.
 - The complainant(s) and the accused individual(s) will be notified that the investigation has concluded and any other relevant information where appropriate.
 - Any corrective action will be implemented.

Retaliation is Prohibited

The District strictly prohibits retaliation because an employee engages in protected activities in the connection with a complaint of harassment or discrimination.

Retaliation

- Any employee engaged in “protected activity” is protected by law from retaliation.
- Protected activities include:
 - Making a complaint about sexual harassment or suspected sexual harassment;
 - Providing information during an investigation; and
 - Testifying in connection with complaint.

Retaliation, Cont'd.

- Retaliation is any action taken to alter an employee's terms and conditions of employment **because** that individual engaged in protected activities.
- Retaliation can be any adverse action that could have the effect of discouraging a reasonable individual from making a complaint of sexual harassment, and may include:
 - Sudden adverse change in work schedule or location
 - Termination.

Retaliation, Cont'd.

- 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.
- In order to make a claim of retaliation, the individual must be able to prove that the adverse action was retaliatory.
- An individual who believes he or she has been retaliated against for engaging in a protected activity should **immediately** report it to the District's Compliance Officer.

Additional Protections and Remedies

In addition to those protections and remedies we have already outlined, employees may also choose to pursue outside legal remedies.

Statutory Provisions

- Discrimination and harassment (including sexual harassment) are unlawful pursuant to the New York State Human Rights Law § 296.1 (codified as N.Y. Executive Law, Article 15), and the federal Civil Rights Act of 1964, Title VII (codified as 42 U.S.C. § 2000e et seq.).



New York State Human Rights Law

- A complaint alleging violation of the Human Rights Law may be filed either with the New York State Division of Human Rights (DHR) or in New York State Supreme Court.
- Complaints may be filed with DHR any time within three (3) years of the alleged sexual harassment (or discrimination or retaliation). A complainant does not need to have an attorney to file a complaint.
- If an individual did not already file at DHR, they can sue directly in state court under the Human Rights Law within three (3) years of the alleged sexual harassment (or discrimination or retaliation).
 - For more information, visit www.dhr.ny.gov.

Title VII Of The Civil Rights Act Of 1964

- A complaint alleging violation of Title VII may be filed with the U.S. Equal Employment Opportunity Commission (EEOC) within 300 days of the alleged sexual harassment (or discrimination or retaliation). A complainant does not need any attorney to file.
- A complaint must be filed with the EEOC *before* the individual can file in federal court.
- *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.*
 - For more information, visit www.eeoc.gov.

Local Protections

- Many municipalities enforce laws protecting individuals from sexual harassment and discrimination.
 - An employee should contact his or her county, city, or town to find out if laws exist.
- Harassment may constitute a crime if it involves things like physical touching, coerced physical confinement, or coerced sex acts. In those situations, local law enforcement should be contacted.

Consequences of Discrimination and/or Harassment

Incidents of discrimination, harassment or retaliation can result in discipline (subject to applicable collective bargaining agreement provisions)

Discipline

- In issuing any such discipline, the District will comply with:
 - Relevant Collective Bargaining Agreements
 - New York Education Law § 3020-a
 - New York Civil Service Law § 75
 - Part 83
- If the offending individual is a student, appropriate disciplinary action will be applied, including suspension, in accordance with applicable laws, regulations and District policy.
- If the offending individual is a third party, he or she will be subject to appropriate sanctions as warranted and in compliance with the law.

Sexual Harassment Case Studies

Let's take a look at a few scenarios that help explain the kind of behaviors that can constitute sexual harassment.

Extracurricular Activities?

Ann is a student teacher assigned to Mr. Jones' chemistry class. Mr. Jones is everyone's favorite teacher. Ann has struggled all year with managing the students in class and developing lesson plans. She has started staying after school to request and receive help from Mr. Jones on these areas. Lately, Mr. Jones' behavior has made Ann uncomfortable. He has begun telling Ann how pretty she is and that he is having marital problems. He also requests a hug from Ann before she leaves. While this has taken place in the classroom, Mr. Jones is now suggesting that they go to a café in town to discuss her areas of expressed difficulty. He tells her that she must attend these sessions if she wants to earn a favorable review for student teaching credit.

Extracurricular Activities?

Question 1. When Mr. Jones began helping Ann after school with her classroom management and lesson planning skills, this was sexual harassment.

True or False?

Extracurricular Activities?

FALSE: Mr. Jones' initial acceptance of Ann's request for help after school is not sexual harassment. Mr. Jones did nothing wrong by agreeing to help a student teacher who was struggling in the classroom after regular school hours.

Extracurricular Activities?

Question 2. Ann cannot complain of sexual harassment after Mr. Jones commented on her appearance and told her of his marital problems because she continued seeking him out after school for guidance.

True or False?

Extracurricular Activities?

False. Continuing to meet after school with a supervising teacher does not mean that the teacher has a right to behave as Mr. Jones did toward Ann. She has the right to continue her performance as a student teacher in a safe environment free from harassment or threats.

Extracurricular Activities?

Question 3. Ann should report Mr. Jones' behavior to a school administrator.

True or False?

Extracurricular Activities?

True. Ann should report Mr. Jones' behavior, including his threat to punish her academically (or at least his threat to lower her grade for credit) if she did not accompany him to an after hours discussion off campus. If a supervisor, teacher or other school employee offers a better outcome or treats you better if you do something potentially inappropriate or sexual, that is a type of sexual harassment often called *quid pro quo* harassment. The complaint should be promptly and thoroughly investigated in the event that discipline must be issued and also to prevent recurrence.

The Coach

Jessica is a 12th grade varsity soccer player. She has worked with her soccer coach the past four years of high school and they have become close. However, Jessica's coach has begun telling her sexual jokes and making suggestive comments toward her. When Jessica rebuffs the coach and tells him his behavior makes her uncomfortable, he asks her, "Do you even like guys or are you a lesbo?" Recently, the coach showed Jessica a calendar of bikini-clad female athletes and told her she is hot enough to pose for such a magazine. Jessica wants to quit the team to avoid her coach.

The Coach

Question 1. Jessica and the coach's close relationship means that the coach's conduct is not considered sexual harassment.

True or False?

The Coach

False. Simply because a student and a school employee (including coaches) enjoy a relationship of trust and/or camaraderie does not, in and of itself, amount to sexual harassment. An employee may be engaging in unlawful or prohibited harassment if he or she attempts to take advantage of such relationship by making sexually charged comments, for instance.

The Coach

Question 2. The coach's questions about Jessica's sexual preference and/or orientation was not sexual harassment.

True or False?

The Coach

False. Sexual harassment can be verbal in nature and on the basis of a perceived sexual orientation; this would include “comments” or “jokes” a student’s sexual orientation or preference.

The Coach

Question 3. The Coach's display of the bikini calendar was not sexual harassment because he was only complimenting Jessica.

True or False?

The Coach

False. Hostile environment sexual harassment on the basis of sex may be created by words, signs, jokes, pranks, intimidation, physical actions or violence, either of a sexual nature or not, directed at an individual because of the individual's sex. Hostile environment sexual harassment includes sexual or discriminatory displays or publications, such as displaying pictures, posters, calendars, and the like that are sexually demeaning or pornographic.

Not Taking “No” For An Answer

Amanda is a teacher at the elementary school. Her colleague, fellow teacher John, has just been through a divorce. He drops comments on a few occasions that he is lonely and needs to find a new girlfriend. Amanda and John have been friendly in the past and have had lunch together in the faculty room on many occasions. John asks Amanda to go on a date with him—dinner and a movie. Amanda likes John and agrees to go out with him. She enjoys her date with John but decides that a relationship with a colleague is not a good idea. She thanks John for a nice time, but explains that she does not want to have a relationship with him. John waits two weeks and then starts pressuring Amanda for more dates. She refuses, but he does not stop and keeps asking her to go out with him.

Not Taking “No” For An Answer

Question 1. When John first asked Amanda for a date, this was sexual harassment.

True or False?

Not Taking “No” For An Answer

FALSE: John’s initial comments about looking for a girlfriend and asking Amanda, a colleague, for a date are not sexual harassment. Even if Amanda had turned John down for the first date, he had done nothing wrong by asking for a date and by making occasional comments that are not sexually explicit about his personal life.

Not Taking “No” For An Answer

Question 2. Amanda cannot complain of sexual harassment because she went on a date with John.

True or False?

Not Taking “No” For An Answer

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

Not Taking “No” For An Answer

Amanda complains to her principal, and the principal (as required) reports her complaint to the person designated by the school district to receive complaints. John is questioned about his behavior and he apologizes. He is instructed by the designated person to stop. John stops for a while but then starts leaving little gifts for Amanda in her classroom with accompanying love notes. The love notes are not overtly offensive, but John’s behavior is starting to make Amanda nervous and continually uncomfortable.

Question 3. John’s subsequent behavior with gifts and love notes is not sexual harassment because he has stopped asking Amanda for dates as instructed. He is just being nice to Amanda because he likes her.

True or False?

Not Taking “No” For An Answer

FALSE: Amanda should report John’s behavior. She was entitled to have effective assistance in getting John to stop his inappropriate workplace behavior. However, because John has returned to pestering Amanda after being told to stop, he could be subject to serious disciplinary action, in accordance with relevant law and applicable bargaining agreement.

The Boss With A Bad Attitude

Mary is a new secretary hired to work in the main office of the high school. The principal, Nick, is friendly and helps her get familiar with her job duties. After a few days, when no one else is around, Nick comes over to Mary's desk to chat about what he did last night; which was to go to a strip club. Mary is shocked that Nick would bring up such a topic in the workplace but says nothing in response. Nick continues talking and says that all the women in the building are so unattractive that he needs to get out and "see some hot chicks" once in a while. He tells Mary he is glad she was hired because, unlike the others, she is "easy on the eyes." Mary feels offended and demeaned that she and the other women in her workplace are being evaluated on their looks by their principal.

The Boss With A Bad Attitude

Question 1. Because Nick did not tell Mary that she is unattractive, he has not harassed her.

True or False?

The Boss With A Bad Attitude

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

The Boss With A Bad Attitude

Question 2. By bringing up his visit to the strip club, Nick is engaging in inappropriate workplace behavior.

True or False?

The Boss With A Bad Attitude

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 Mary to report this conduct.

The Boss With A Bad Attitude

Question 3. Nick should be instructed to stop making these types of comments, but this is not a serious matter.

True or False?

The Boss With A Bad Attitude

FALSE: Nick's comments about female employees are a serious matter and show his contempt and/or disregard for women in the workplace. Nick is required to model appropriate behavior for all employees, and must not exhibit behaviors or treatment toward them on the basis of their sex or any other protected characteristic. The Superintendent and/or designated administrator should be aware of this, even if the other employees are not, and Nick should be disciplined, as appropriate.

No Job For A Man?

Ryan works as the school nurse. Some of the female teachers and clerical staff think it is fun to tease him. Ryan often hears comments like “why wouldn’t you have continued on to medical school?” in a joking manner. Also, someone keeps putting a handmade sign on the employee bathroom nearest to the nurse’s office that says, “Women Only.”

Question 1. Men in traditionally female jobs should expect teasing and should not take joking comments too seriously.

True or False?

No Job For A Man? Cont'd.

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

No Job For A Man? Cont'd.

Question 2. Ryan cannot complain, because the Principal and Assistant Principal in the building sometimes join in with the joking behavior, so he has nowhere to go.

True or False?

No Job For A Man? Cont'd.

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

No Job For A Man? Cont'd.

Some of Ryan's other coworkers are strongly opposed to his presence in the traditionally all-female profession. These coworkers have sometimes said things to him like, "You're taking a job away from a woman who deserves it," and "What kind of a father are you?" Others simply give him a cold shoulder and do not offer to help him if or when he needs it.

Question 3. These behaviors, while rude, are not sexual harassment because they are not sexual in nature.

True or False?

No Job For A Man? Cont'd.

FALSE: The behaviors are directed at him because he is a man and appear to be intended to intimidate him and cause him to quit his job. While not sexual in nature, this harassment is because of his sex and can create a hostile work environment.

Too Close For Comfort

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

Question 1. Allison should just ignore Sarah's behavior.

True or False?

Too Close For Comfort

FALSE: If Allison is uncomfortable with Sarah's behavior, she has options. If she feels comfortable doing so, she should tell Sarah to please stay out of her personal space because her closeness and touching make her uncomfortable. Another option is to complain directly to a person designated by the school district to receive complaints, who can then speak with Sarah.

Too Close For Comfort

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

Question 2. Sarah’s brushing up against Allison in the classroom could just be inadvertent and does not give Allison any additional grounds to complain about Sarah.

True or False?

Too Close For Comfort

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 the classroom, Allison should have reported all of the behaviors she experienced that made her uncomfortable.

Too Close For Comfort

Question 3. Sarah touching Allison's breast is inappropriate but is probably not unlawful harassment because it only happened once.

True or False?

Too Close For Comfort

FALSE: Any type of sexual touching is very serious and does not need to be repeated to constitute sexual harassment. Allison should immediately report it without waiting for it to be repeated. Sarah can expect to receive formal discipline, including possible termination, in accordance with applicable law and/or collective bargaining agreement provisions.

An Issue About Appearances

Eric works in the transportation department as a clerk typist. He likes to wear jewelry, and his attire frequently includes earrings and necklaces. His direct supervisor, Margaret, thinks it's "weird" that, as a man, Eric 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. Eric applies for another position where he would interact more openly with the public. Margaret tells Eric that if he wants that job, one that is viewed as a promotion, he had better look "more normal."

An Issue About Appearances, Cont'd.

Question 1. Eric's boss is correct to tell him wearing jewelry is inappropriate for any type of position where he will interact with community members or the public.

True or False?

An Issue About Appearances, Cont'd.

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

An Issue About Appearances, Cont'd.

Margaret also is “suspicious” that Eric is gay, which she says she “doesn't mind,” but she thinks Eric 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?” Eric tries to respond politely “No” to all her questions but is becoming annoyed. Margaret starts gossiping with Eric’s coworkers about his supposed sexual orientation.

Question 2. Eric is the recipient of harassment on the basis of sex and sexual orientation.

True or False?

An Issue About Appearances, Cont'd.

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

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

An Issue About Appearances, Cont'd.

Eric decides that he is not going to get a fair chance at the promotion under these circumstances, and he complains to the District's designee about Margaret's behavior. The designee conducts an investigation and tells Margaret that Eric'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 Eric 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 Eric and lacks his educational credentials.

An Issue About Appearances, Cont'd.

Question 3. Eric has likely been the target of discrimination on the basis of sex, sexual orientation and/or retaliation.

True or False?

An Issue About Appearances, Cont'd

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

Closing Remarks

Everything you need to know – you learned in kindergarten...

Best Practices

- Be considerate of co-workers' feelings and treat co-workers with dignity/respect.
- Prevention is the best tool.
- Don't "go along" with offensive behavior. You have a duty to report.
- So long as you file a report and/or participate in an investigation in good faith, no adverse action can be taken against you.
- Monitor your own conduct. It can be misconstrued.
- Always be aware of others around you; third parties can be offended.

Best Practices, cont'd.

- AVOID conduct that could be misinterpreted as sexual.
- Limit physical interaction with co-workers and third-parties.
- Use caution when posting on Facebook and other social media.
- Reduce text messaging with co-workers. It's retrievable.
- Engage in only consensual relationships.
- Be sure you know what conduct is welcomed/unwelcomed; everyone is not equally tolerant.

Best Practices

- Consider: *Would my behavior change if someone from my family was in the room? Would I be upset if someone in my family was treated this way?*
- Employees should report any instance of harassment or discrimination so that the District can investigate, provide for a remedy, as appropriate, and prevent recurrence.



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QUESTIONS?

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