



## CONTINUING EDUCATION (CE) COURSE MATERIAL

### Course No. CE1601P1 – Professional Readiness: Prevention of Sexual Harassment

#### COURSE OBJECTIVE

This course will identify some of the prohibited instances of discrimination in employment, focusing on circumstances when sexual harassment occurs in the workplace, as well as identify some techniques for intervention to prevent or stop the sexual harassment.

#### COURSE MATERIAL

##### Civil Rights Act

Title VII of the Civil Rights Act of 1964, prohibits public and private employers from discriminating in employment against individuals because of race, color, national origin, religion or sex. The law prohibits not only intentional discrimination, but also neutral job policies that disproportionately exclude minorities and that are not job related. Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act.

##### A Definition of Sexual Harassment<sup>1</sup>

Discrimination because of sex includes sexual harassment which means unwelcome sexual advances, requests for sexual favors, and other verbal physical conduct or communication of a sexual nature when:

- Submission to such conduct or communication is made a term or condition either explicitly or implicitly to obtain employment, public accommodations or public services, education, or housing.
- Submission to or rejection of such conduct or communication by an individual is used as a factor in decisions affecting such individual's employment, public accommodations or public services, education, or housing.
- Such conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, education, or housing, or creating an intimidating, hostile, or offensive employment, public accommodations, public services, education, or housing environment.

##### Age Discrimination in Employment Act

The Age Discrimination in Employment Act (ADEA) protects individuals who are 40 years of age or older from employment discrimination based on age. The ADEA's protections apply to both employees and job applicants. Under the ADEA, it is unlawful to discriminate against a person because of age with respect to any term, condition, or privilege of employment. It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on age or for filing an age discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under the ADEA.

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<sup>1</sup> From the Elliott-Larsen Civil Rights Act 453 of 1976 as Amended by Public Act 202 of 1980, State of Michigan, Department of Civil Rights.



### **Americans with Disabilities Act**

The Americans with Disabilities Act prohibits employers from discriminating against qualified individuals with disabilities in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions and privileges of employment.

A person with a disability is one who:

- has a physical or mental impairment that substantially limits one or more major life activities;
- has a record of such an impairment; or
- is regarded as having such an impairment.

A qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question.

“Reasonable accommodation” may include, but is not limited to:

- making existing facilities used by employees readily accessible to and usable by persons with disabilities;
- job restructuring, modifying work schedules, reassignment to a vacant position;
- acquiring or modifying equipment or devices, adjusting modifying examinations, training materials, or policies, and providing qualified readers or interpreters.

An employer is required to accommodate the known disability of a qualified applicant or employee if it would not impose an "undue hardship" on the operation of the employer's business. Undue hardship is defined as an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources and the nature and structure of its operation. An employer is not required to lower quality or production standards to make an accommodation, nor is an employer obliged to provide personal use items such as glasses or hearing aids.

### **Equal Pay Act**

The Equal Pay Act prohibits discrimination on the basis of sex in the payment of wages or benefits, where men and women perform work of similar skill, effort, and responsibility for the same employer under similar working conditions. Employers may not reduce wages of either sex to equalize pay between men and women.

### **Facts About Sexual Harassment<sup>2</sup>**

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.

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

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.

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<sup>2</sup> Source: the U.S. Equal Employment Opportunity Commission.



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

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

When investigating allegations of sexual harassment, EEOC looks at the whole record: the circumstances, such as the nature of the sexual advances, and the context in which the alleged incidents occurred. A determination on the allegations is made from the facts on a case-by-case basis.

Prevention is the best tool to eliminate sexual harassment in the workplace. Employers are encouraged to take steps necessary to prevent sexual harassment from occurring. They should clearly communicate to employees that sexual harassment will not be tolerated. They can do so by establishing an effective complaint or grievance process and taking immediate and appropriate action when an employee complains.

### **Unlawful Sexual Harassment: How to Recognize It, How to Stop It<sup>3</sup>**

Sexual harassment is when someone makes you think you'll get in trouble or lose your job, or be discriminated against in obtaining or benefiting from public accommodations, public services, employment, education, or housing, if you do not give in to their sexual advances or put up with their sexual remarks.

The following are some examples of cases in Michigan:

#### **Joann:**

Joann just took a "nontraditional" job in the skilled trades. The men on the job whistle and hiss when she walks by and yell out what they'd like to do to her when she's alone. They stare at her body and touch her when no one is looking. Pornographic pictures are pasted on her locker and objects from a local sex shop are attached with obscene notes to her work bench. Her supervisor says if she can't "take a little fun" she should get out.

#### **Karen:**

Karen was still in school when her professor offered her an "A" in a course if she'd sleep with him. She didn't and she got a "C". She appealed to the university's review board and her mark was changed to an "A". Nothing was done to the professor. Karen has been working for several years and getting promoted with no trouble. Now her new boss asks her to stay late at work and "discusses" her upcoming promotion with his arms around her. He asks her to bring completed work to his apartment on the weekend. Karen is afraid that she has a record as a troublemaker because of her college experience and she's afraid no one will believe her again.

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<sup>3</sup> Source: State of Michigan, Department of Civil Rights, retrieved August 2007 from [www.michigan.gov](http://www.michigan.gov). Edited for inclusion in this course.



**Molly:**

Molly works in a factory and wears an apron filled with bolts for the assembly line. Her supervisor "checks" the bolts by reaching into the apron and feeling around. He does not "check" the aprons of male workers. He also waits until Molly is alone in the cloakroom and backs her up against the wall. When Molly protests, he says he's being "friendly" and she shouldn't be "uncooperative" or she'll lose her job.

**Susan:**

Susan works in an insurance office and has to travel to other cities with her boss. He wants to share a hotel room "to save the company some money." When Susan refuses he tells her to "smarten up" or he'll give her a poor rating on her next job review and demote her to a clerical job. In the meantime, he doubles Susan's workload and complains that she "can't keep up."

**Who are the victims?**

Although the majority of victims are women harassed by men, the following cases of sexual abuse on the job have been reported:

- Men sexually harassed by women
- Women sexually harassed by women
- Men sexually harassed by men

Victims range from young to old, from executives to unskilled workers, from married to single, and can be attractive or not. No one knows why a certain person is singled out for sexual harassment while co-workers are left alone. Often, workers who need their jobs most desperately, to support their children or spouses, are singled out because they are most likely to fear losing their pay.

**What can I do?**

First, be sure that the harasser knows you do not welcome these advances. State your objections clearly when it first begins, don't just hope the problem will go away.

If the harassment continues, don't keep it to yourself. Put your objections in writing and ask for a written reply. Talk to your co-workers and tell them what is happening to you. Ask if they have had similar problems with your harasser. Keep notes on when your problem occurred and what you did and said. You may need these notes if you have to go to court.

If initial efforts fail, go higher. Use your grievance procedure, if any, or write to your supervisor's supervisor. Ask for written answers to your complaints.

If your union steward or other grievance taker shrugs off your complaint or says it is not a "grievance," do not become discouraged and drop your complaint. Go higher and exercise every right to appeal. Under the National Labor Relations Act section on the duty of fair representation, your union has the duty to represent you on issues of sexual harassment.

**Why has it been kept quiet?**

Like rape, most sexual harassment goes unreported because the victims are somehow made to feel ashamed of what has happened to them. They are afraid that other people will say they "asked for it" or that no one will believe them or they won't be able to prove it and will be branded as troublemakers. Rather than face embarrassment and reprisals, many victims who



are lucky enough to transfer, or get a new job elsewhere, quietly leave without saying anything. This leaves the harasser free to victimize other workers.

### **How can I help prevent harassment?**

Share the information in this brochure with others. Be supportive of people you know who are facing this problem. Encourage them to resist and take action. If you observe sexual harassment, be courageous enough to offer to be a witness. Put yourself in the victim's place and remember that you will need encouragement and support if this ever happens to you. Above all, don't be forced into "going along with the crowd" and accepting sexual harassment as "the way things are" or as a joking matter. Support legislation that seeks to prevent sexual harassment. Ask your company or union if they have a specific policy against sexual harassment. If not, work toward getting one. Talk with your co-workers about things like appropriate dress on the job, joking around about sex, personal relationships on the job and other things that people may try to use against you if you are ever a victim of sexual harassment.

### **Employer's obligations<sup>4</sup>**

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Sexual harassment in the workplace is illegal under federal and state law. As an employer, a municipality is legally obligated to protect its employees from sexual harassment by town officials, supervisors, co-employees and others. A failure to adopt appropriate policies and procedures, conduct prompt and thorough investigations and remedy the harassment will result in a significant risk of liability exposure for the municipality. Indeed, the damage awards in these types of cases can be quite high given that successful litigants are entitled to recovery of attorneys' fees and costs of suit in addition to other nominal and compensatory damages.

The following tips (although not exhaustive) are designed to help municipalities comply with federal and state mandates and minimize the risk of exposure.

#### **1. Does Your Municipality Have a Written Anti-Harassment Policy and Poster?**

Under state law, all municipalities must have a written anti-harassment policy that is distributed to each employee. 21 V.S.A. §495h. (Federal law - Title VII of the Civil Rights Act of 1964 – has similar requirements for municipalities that employ 15 or more individuals.)

At a minimum, the policy must contain: (a) a statement that sexual harassment sexual harassment is illegal; (b) a statement that retaliation for bringing or supporting a harassment claim is illegal; (c) a description and examples of sexual harassment; (d) a statement of the range of consequences for employees who engage in sexual harassment; (e) an explanation as to how to file complaints within the municipality (including the names and addresses of the persons to whom complaints should be made); and (f) an explanation as to how to file external complaints with the federal Equal Employment Opportunity Commission (EEOC) and the Vermont Attorney General's office. Moreover, VLCT recommends that each employee sign a form acknowledging receipt and understanding of the policy.

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<sup>4</sup> From the Vermont League of Cities and Towns, Ritter, S. "VLCT News," July 2002, retrieved August 2007 from [http://www.resources.vlct.org/u/lc\\_02\\_07b.pdf](http://www.resources.vlct.org/u/lc_02_07b.pdf). This article highlights the special circumstances of how a public municipality should deal with sexual harassment, but its general approach is equally applicable and instructive for private employers.



It is also recommended that the municipality designate at least two or three management-level people to whom complaints of sexual harassment may be brought. The law is clear that there must be a complaint complaint by-pass process in place so that an employee is not forced to complain to the supervisor who is actually engaging in the harassment or who is otherwise sanctioning the unlawful behavior. If possible, one of individuals to whom complaints may be brought should be a woman, and all of the management-level individuals should be accessible to all employees and trained in processing and investigating sexual harassment claims.

Municipal employers are also required to post in a prominent and accessible location a poster that contains, at a minimum, the elements of the employer sexual harassment policy. 21 V.S.A. §495h.

A model Anti-harassment Policy and Poster is available from the Vermont Department of Labor and Industry web site's Wage and Hour section, [www.state.vt.us/labind/wagehr.htm](http://www.state.vt.us/labind/wagehr.htm) (see the Posters/Brochures list at the bottom of the page) or by calling the Department at 802/828-2288.

## **2. Does Your Municipality Conduct Anti- harassment Training?**

Under Vermont law, training for supervisors and employees is “encouraged.” 21 V.S.A. §495h. Therefore, all municipalities should have an annual training program for employees and supervisors that address policies and procedures regarding sexual harassment. Training for supervisors should also include the methods they should use to ensure immediate and appropriate corrective action in addressing sexual harassment complaints.

VLCT PACIF has been conducting anti- harassment regional training seminars for supervisors and employees of PACIF members. For additional information, please contact Brian Fitzpatrick at 800/649-7915.

## **3. Are sexual harassment Complaints Being Handled Promptly and Effectively?**

A major lesson from the case law in this area is that the employer should never ignore a sexual harassment complaint or delay an investigation. At the end of the day, judges and juries will look to whether the employer promptly handled the complaint and took steps to ensure immediate cessation of the harassment. When addressing a sexual harassment complaint, employers should, at a minimum, do the following:

### ***(i) Conduct a Complete and Thorough Interview of the Complainant***

You must obtain a complete recitation of what occurred – including all dates, times, locations, witnesses, documents, conversations, actions taken, to whom reports of the harassment were made, etc.

### ***(ii) The employer Cannot Promise Confidentiality to the Complainant***

There may be instances where the complainant wants the employer to keep the matter confidential or does not want an investigation at all. The bottom line is that the employer has an obligation to investigate if the reported behavior falls within the definition of sexual harassment, and the employer cannot make a guarantee of confidentiality. The best the employer can do is advise the complainant that the information will be shared only with people who have a business need to know and



only to the extent necessary to interview the relevant witnesses.

***(iii) Document the Information Provided***

After completing the initial interview of the complainant, the details of the interview should be immediately written up and then signed by the complaining witness. This will avoid any discrepancies that may arise later.

***(iv) Determine Whether a Further Investigation is Necessary/Consult Counsel***

If the allegations made by the complaining witness fall within the definition of sexual harassment, the employer must take the necessary steps to investigate the incident (unless there is already sufficient independent evidence to allow the employer to conclude that the harassment has occurred). If an investigation is warranted, the employer should advise the complaining witness as to the length of time the investigation will take and that the witness will be advised of the outcome by a date certain. If there is a concern about the complainant's well being, the employer should give consideration to providing paidleave to the complainant (if he or she desires such leave) or to the accused. It is also strongly recommended that the employer consult with counsel for guidance in conducting the investigation and taking further action, if necessary.

***(v) Conduct Thorough and Well-documented Interviews of all Relevant Witnesses***

The employer should give careful consideration to the order of witness interviews. In addition, each witness should be thoroughly interviewed in the same manner and with the same detail as the complaining party. All interviews should be well documented and signed by the witnesses.

***(vi) Stop the Workplace Rumor Mill***

The integrity of the investigation will be seriously threatened if the relevant witnesses are allowed to discuss the matter outside the confines of the interview. It is critical that all employees be aware that if they discuss any aspect of a sexual harassment investigation with anyone other than the investigator (or their own attorney) they will be subject to discipline up to and including discharge. This policy should be communicated to all employees in writing as part of the employer personnel policies.

***(vii) Findings and Recommendations***

Once the investigator has gathered the information and reduced it to writing, the evidence should be analyzed to determine whether it is more likely than not that the harassment occurred. Factors to be considered include witness credibility, quality of supporting evidence on both sides, prior complaints against the accused and the personnel records of those involved. Once a decision is made, the investigator's findings and conclusions should be reduced to writing.

***(viii) Does the Punishment Fit the Crime?***

If the employer determines that it is more likely than not that the harassment occurred, then the employer obligation is to take measures to ensure immediate cessation of the harassment. The factors that are relevant to this determination are very case specific and will depend on the severity of the conduct, prior instances, the terms of relevant personnel policies and collective bargaining agreements, etc. The message here is that the employer must ensure immediate cessation of the



harassment. If the measures taken don't stop the offending behavior, then more drastic measures must be taken.

***(ix) Follow Up is Key***

Once discipline is imposed in accordance with the municipality's applicable rules and procedures, then there must be continued follow up with the complainant to ensure that the harassing behavior has stopped. Although the employer cannot share with the complainant the nature of the discipline that was imposed on the accused, the employer should advise the complainant that appropriate action was taken and that the complainant should immediately report any future harassing behavior.

***(x) Keep Investigation Documents in a Separate, Confidential File***

The documents generated during a sexual harassment investigation should be kept in a separate, confidential file and access should be allowed only to authorized individuals with a business need to know the information.

**Essential Elements of an Anti-harassment Policy<sup>5</sup>**

Here are two examples of sexual harassment policies, as well as a guide for investigating harassment claims.

***Sample Sexual Harassment Policy #1***

[Company name]'s position is that sexual harassment is a form of misconduct that undermines the integrity of the employment relationship. All employees have the right to work in an environment free from all forms of discrimination and conduct which can be considered harassing, coercive, or disruptive, including sexual harassment. Anyone engaging in harassing conduct will be subject to discipline, ranging from a warning to termination.

**What is sexual harassment?** Sexual harassment is defined as any unwanted physical, verbal or visual sexual advances, requests for sexual favors, and other sexually oriented conduct which is offensive or objectionable to the recipient, including, but not limited to: epithets, derogatory or suggestive comments, slurs or gestures and offensive posters, cartoons, pictures, or drawings.

**When is conduct unwelcome or harassing?** Unwelcome sexual advances (either verbal or physical), requests for favors and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- submission to such conduct is either an explicit or implicit term or condition of employment (e.g., promotion, training, timekeeping or overtime assignments)
- submission to or rejection of the conduct is used as a basis for making employment decisions (hiring, promotion, termination)
- the conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment

**What is *not* sexual harassment?** Sexual harassment does not refer to occasional compliments of a socially acceptable nature. It refers to behavior that is not welcome, that is personally offensive, that debilitates morale, and that, therefore, interferes with work

<sup>5</sup> From the "Small Business Handbook," *Business Tools*, Office Depot, retrieved August 2007 from [www.officedepot.com](http://www.officedepot.com).



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effectiveness.

**What should you do if you are sexually harassed?** If you feel that you have been the recipient of sexually harassing behavior, report it immediately to the owner of [company name] or other supervisor. It is preferable to make a complaint in writing, but you can accompany or follow up your written complaint with a verbal complaint.

If your supervisor is the source of the harassing conduct, report the behavior to that person's supervisor or to the owner of [company name].

*Your identity will be protected and you will not be retaliated against for making a complaint.*

**What happens after a complaint is made?** Within [number] of days after a written complaint is made, a supervisor, or other person designated by the owner, will investigate the complaint. The person will speak with possible witnesses and will speak with the person named in your complaint. *Your anonymity will be protected to the extent possible.*

Depending on the complexity of the investigation, you should be contacted within [number plus measure of time (e.g., four days, two weeks, one month)] about the status of your complaint and whether action is being taken.

*Sample Sexual Harassment Policy #2*

[Company name] believes that you should be afforded the opportunity to work in an environment free of sexual harassment. Sexual harassment is a form of misconduct that undermines the employment relationship. No employee, either male or female, should be subjected verbally or physically to unsolicited and unwelcomed sexual overtures or conduct.

Sexual harassment refers to behavior that is not welcome, that is personally offensive, that debilitates morale and, therefore, interferes with work effectiveness.

Behavior that amounts to sexual harassment may result in disciplinary action, up to and including dismissal.

### Definition

[Company name] has adopted, and its policy is based on, the definition of sexual harassment set forth by the Equal Employment Opportunity Commission (EEOC). The EEOC defines sexual harassment as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- submission to such conduct is made either explicitly or implicitly a term or condition of your employment
- submission to or rejection of such conduct by you is used as the basis for employment decisions affecting you
- such conduct has the purpose or effect of unreasonably interfering with your work performance or creating an intimidating, hostile or offensive working environment.



## **Employer's Responsibility**

[Company name] wants you to have a work environment free of sexual harassment by management personnel, by your coworkers and by others with whom you must interact in the course of your work as a [company name] employee. Sexual harassment is specifically prohibited as unlawful and as a violation of [company name]'s policy. [company name] is responsible for preventing sexual harassment in the workplace, for taking immediate corrective action to stop sexual harassment in the workplace and for promptly investigating any allegation of work-related sexual harassment.

## **Complaint Procedure**

If you experience or witness sexual harassment in the workplace, report it immediately to \_\_\_\_\_. You may also report harassment to any other member of [company name]'s management or ownership. All allegations of sexual harassment will be quickly investigated. To the extent possible, your confidentiality and that of any witnesses and the alleged harasser will be protected against unnecessary disclosure. When the investigation is completed, you will be informed of the outcome of that investigation.

## **Retaliation Prohibited**

[Company name] will permit no employment-based retaliation against anyone who brings a complaint of sexual harassment or who speaks as a witness in the investigation of a complaint of sexual harassment.

## **Written Policy**

You will receive a copy of [company name]'s sexual harassment policy when you begin working for [company name]. If at any time you would like another copy of that policy, please contact \_\_\_\_\_. If [company name] should amend or modify its sexual harassment policy, you will receive an individual copy of the amended or modified policy.

## **Penalties**

Sexual harassment will not be tolerated at [company name]. If an investigation of any allegation of sexual harassment shows that harassing behavior has taken place, the harasser will be subject to disciplinary action, up to and including dismissal.

### *Harassment Investigation Guide*

#### **Getting the employee to describe the claim:**

- Listen to the charge. Don't make comments like, "You're overreacting."
- Acknowledge that bringing a harassment complaint is a difficult thing to do.
- Maintain a professional attitude.
- Gather the facts; don't be judgmental.
- Ask who, what, when, where, why, and how. Find out if the employee is afraid of retaliation. How does the employee want the problem resolved?



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**Conducting an investigation of the claim—general rules to follow:**

- Investigate immediately. Delaying or extending an investigation can make witness testimony increasingly unreliable.
- Remember that the manner in which the investigation is handled can itself furnish grounds for a hostile environment claim, so carefully document every step.
- Treat all claims seriously—even those that seem frivolous—until you have reason to do otherwise.
- Keep the investigation confidential. Emphasize to those involved that your discussions are not to be shared with unconcerned parties. Warn of possible disciplinary action, if necessary.
- Limit the number of persons who have access to the information. Communicate strictly on a “need to know” basis.
- Ask questions so that information is not unnecessarily disclosed. For example, instead of asking, “Did you see Paul touch Joan?” ask “Have you seen anyone touch Joan at work in a way that made her uncomfortable?” Remember—the purpose of the investigation is to gather facts, not disseminate allegations.
- If there is more than one allegation, treat each separately.
- To avoid defamation liability, never broadcast the facts of a given situation or the results as an example to others or as a training tool.

**Interviewing the complainant (Can be done when employee first reports charge):**

- Get specific details.
- Find out whether there was a pattern of previous episodes or similar behavior toward another employee.
- Get the specific context in which the conduct occurred. Where? What time?
- Determine the effect of the conduct on the complainant. Was it economic, non-economic and/or psychological?
- Determine the time relationship between the occurrence of the conduct, its effect on the complainant, and the time when the complainant made the report.
- Prepare a detailed chronology.
- Analyze whether there might have been certain events that triggered the complaint, *i.e.*, promotion, pay or transfer denial.
- Determine whether there were any possible motives on the part of the complainant.
- Find out what the complainant wants.
- Explain to the complainant that the charges are serious, that you will conduct a thorough investigation before reaching any conclusion, and that he or she will not be retaliated against for making the complaint.
- Don't make any statements about the accused employee's character, job performance, or family life.



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**Interviewing the accused:**

- Obtain a statement from the accused.
- Identify the relationship of the accused to the complainant.
- Was there any prior consensual relationship between the parties? How long have they known each other? Is there a history of group or individual socializing?
- If the individual was a supervisor, indicate the individual's job title, obtain a copy of the individual's job description, and determine the individual's specific duties at the time of the alleged harassment.
- Determine whether the accused directed, or had responsibility for the work of other employees or the complainant, had authority to recommend employment decisions affecting others or was responsible for the maintenance or administration of the records of others.
- You can expect the accused to deny the charges. Observe the reaction. Note whether there is surprise, anger, or disbelief. Describe the details of the allegation and note the areas of disagreement between the testimony of both parties. If the accused denies the allegations, probe further to determine with the accused the background, reasons, and motivation that could possibly trigger the complaint.

**Interviewing witnesses:**

- Obtain statements from any witnesses who support or deny any of the complainant's allegations. Be aware that witnesses are often reluctant to come forward out of fear of reprisal.
- Assure all witnesses that their cooperation is important, that their testimony is confidential and that they will not be retaliated against for testifying.

**Resolving the complaint:**

- Apologize for the incident occurring, *if that is appropriate*.
- When attempting to remedy the conduct, avoid requiring the claimant to work less desirable hours or in a less desirable location. If you offer to transfer the complainant, try to get the complainant's consent and make sure the transfer position is substantially similar to the complainant's prior position. This helps ensure that the complainant is not being illegally punished for reporting discrimination or harassment.
- Consider the severity, frequency and pervasiveness of the conduct when imposing discipline on the harasser. There are several disciplinary options available, including:
  - oral and written warning
  - reprimand
  - suspension
  - probation
  - transfer
  - demotion



— discharge

- When imposing discipline on the accused, any forms of discipline short of discharge should be accompanied by a warning that similar misconduct in the future may result in immediate discharge. If no discipline is imposed, document the reasons why.
- Provide remedial counseling and training on sexual harassment, if appropriate. Also take the opportunity to re-communicate your policy.
- Carefully and fully document the investigation, the discipline imposed, and any remedial steps taken.
- Conduct follow-up interviews with the parties to inform them of the company's actions.

## **I CAN'T BELIEVE YOU SAID THAT!!<sup>6</sup>**

By Bernice R. Sandler

Many People find it difficult to intervene when they observe a person sexually harassing another. Sometimes they do not know what to say or how to intervene.

What follows is a list of ways in which persons can intervene when they observe sexually harassing behaviors. The strategies will also work with other offensive behaviors even if they are not sexual harassment or are prohibited.

Not everyone is comfortable with all of the strategies described; the aim is to provide a variety of ways to respond so that individuals can choose the strategies with which they are most comfortable. Many of the following techniques are also appropriate for individuals to use when they are being harassed by a coworker, supervisor, or student.

### **Strategies for intervening:**

To the extent it is possible, it is best if interventions occur immediately after offensive behavior occurs.

**Humor:** Using humor and playfulness are good ways to handle harassment if you can think of something immediately, because humor in a stressful situation connotes strength. Humorous comments demonstrate that the person making the clever comment was not overpowered by the harassing behavior. Humorous comments also help to break the cycle of behavior. Unfortunately, many of us think wonderfully funny comments later, when it is often too late. Here are some standard remarks which, when said lightly and jokingly, might be helpful in a variety of situations:

I would hate to hear that you are being sued by students for sexual harassment.

Is this a test to see how I would handle sexual harassment?

Are you sexually harassing me [or name of person, or group] again? I'm going to have to call the sexual harassment office [affirmative action office, attorney, etc.] right now!

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<sup>6</sup> Source: Association for Women in Education, Office of Sexual Harassment Prevention & Resolution, 3333 California Street, Suite 293 San Francisco, CA 94143, (415) 476-5186.



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These comments could also be said in a direct manner without humor.

**Surprise:**

*I beg your pardon!*

*I can't believe you said that!*

*Do you know that could be seen as sexual harassment?*

**Direct:** It helps to name or describe the behavior that is inappropriate.

*That comment is offensive to all of us (not "to me"); it is unprofessional and probably is sexual harassment. That behavior has to stop.*

*This is not the first time you've said things like this which many people would call sexual harassment. It's getting in the way of your effectiveness.*

*That behavior is not acceptable here. It violates our policy on sexual harassment.*

*That behavior is disgusting (unprofessional, immature, inappropriate, etc.)*

Pretending to not understand: In addition to the options listed above, one can pretend not to understand what the joke or remark means. This is particularly useful in response to sexist remarks as well as responding to jokes and stories that portray women or racial or other groups as the object of laughter or ridicule. (Most of these jokes are offensive to these groups, although individuals may not openly complain.) Keep a deadpan expression and state that you do not understand the remark and ask the person to repeat it again, such as:

*I don't get the point of your remark.*

*I don't understand what that means.*

*I don't understand how your comment is relevant to our discussion.*

Follow up by asking the person to repeat whatever they just said, and continue to claim that you don't understand what they mean.

**SUGGESTED ADDITIONAL RESOURCES**

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Bissell, LeClair and Royce, James E., *Ethics for Addiction Professionals (Second Edition)*.  
Minnesota: Hazelden Foundation, 1994.

**ACKNOWLEDGEMENTS**

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**CONTINUING EDUCATION (CE) EXAMINATION QUESTIONS**

**Course No. CE1601P1 – Professional Readiness: Prevention of Sexual Harassment**

You are encouraged to refer to the Course Material when answering these questions. Choose the best answer based upon the information contained within the Course Material. Answers which are not consistent with the information provided within the Course Material will be marked incorrect. A score of 70% correct answers is required to receive Continuing Education credit. GOOD LUCK!

**QUESTIONS**

**Questions 1 – 9, 20 and 21 omitted. Start your answers at number 10.**

10. Title VII of the Civil Rights Act of 1964, as amended, prohibits which type of employers from discriminating in employment against individuals because of race, color, national origin, religion or sex?
  - a. Private employers.
  - b. Public employers.
  - c. Both A and B above.
  - d. Neither A nor B above.
  
11. The law prohibits which type of discrimination?
  - a. Intentional discrimination.
  - b. Neutral job policies that disproportionately exclude minorities and that are not job related.
  - c. Both A and B above.
  - d. Neither A nor B above.
  
12. The Age Discrimination in Employment Act (ADEA) protects individuals who are 40 years of age or older from employment discrimination based on age. The ADEA's protections apply to:
  - a. Employees.
  - b. Job applicants.
  - c. Both A and B above.
  - d. Neither A nor B above.
  
13. Sexual harassment is a form of what type of discrimination that violates Title VII of the Civil Rights Act of 1964?
  - a. Age.
  - b. ADA.
  - c. Sex.
  - d. Equal Pay.
  
14. Which of the following constitutes sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment.
  - a. Unwelcome sexual advances.
  - b. Requests for sexual favors.
  - c. Verbal or physical conduct of a sexual nature.
  - d. All of the above.



15. The Course Material suggests that sexual harassment can occur in a variety of circumstances, including which of the following:
  - a. The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex.
  - b. The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
  - c. The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
  - d. All of the above.
  
16. The Course Material identifies other situations in which sexual harassment may occur, including:
  - a. Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
  - b. The harasser's conduct must be unwelcome.
  - c. Both A and B above.
  - d. Neither A nor B above.
  
17. The material from the U.S. Equal Employment Opportunity Commission identifies which of the following as "the best tool" to eliminate sexual harassment in the workplace?
  - a. Aggressive litigation.
  - b. Immediate termination of affected individuals.
  - c. Prevention.
  - d. None of the above.
  
18. The material from the Association for Women in Education suggests that, to the extent possible, it is best if interventions in sexual harassment occur at what point?
  - a. Immediately.
  - b. After the situation has had a chance to resolve itself.
  - c. After the affected individuals have had a chance to "cool down."
  - d. None of the above.
  
19. Suggested strategies from the Association for Women in Education for intervening in a sexual harassment situation include which of the following?
  - a. Humor.
  - b. Surprise.
  - c. Direct.
  - d. All of the above.



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Primary Telephone Number (including Area Code)												Facsimile Number (including Area Code)												
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**SECTION 3.**

- Course Title: Course No. CE1601P1 – Professional Readiness: Prevention of Sexual Harassment  
 Answers (circle correct answer):
- |            |             |             |
|------------|-------------|-------------|
| 1. A B C D | 8. A B C D  | 15. A B C D |
| 2. A B C D | 9. A B C D  | 16. A B C D |
| 3. A B C D | 10. A B C D | 17. A B C D |
| 4. A B C D | 11. A B C D | 18. A B C D |
| 5. A B C D | 12. A B C D | 19. A B C D |
| 6. A B C D | 13. A B C D | 20. A B C D |
| 7. A B C D | 14. A B C D | 21. A B C D |

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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