

## Sexual Harassment in the Workplace

By Bill Gaffney

**Q: I am in a work situation where the office is 90 percent men. Of course, “boys will be boys,” and there is the occasional off-color joke exchanged. I am certainly not a prude, but those jokes are not amusing to me and I don’t care to even hear them from a distance. What can I do about the situation, and would this fall under the guise of sexual harassment?**



A: Let me start by generally defining the two areas of sexual harassment covered by federal law. Keep in mind, though, that I am not an attorney, nor do I have extensive training in EEOC guidelines and interpretations, so

some might feel that my definitions are too generic.

The first area is termed “quid pro quo” and is the easier of the two to define. This is where an employee is threatened or suffers job detriment or retaliation for refusing to submit to sexual demands.

The second area is called “hostile environment.” This is the situation where there is no threat to a person’s job, but the harassment creates an offensive or abusive environment. This area is much grayer.

In both cases, it has to be proved that the harassment was based on the sex of the employee, among other things.

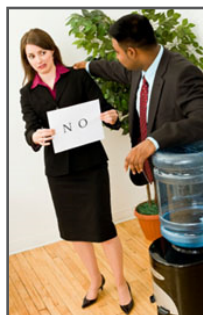
I am not going to discuss the first type of harassment as it is pretty black and white and really revolves more around proving the charges. The second area, however, does warrant discussion here.

The first thing I would ask is, does your employer have a written policy regarding sexual harassment? If they don’t, they should. While it is not mandatory by law, it is very naïve (if not stupid) not to have one and opens the employer up to a much greater potential for problems. The policy should at least state in general terms what is allowable and what is not. If your employer has one, you may well find off-color jokes mentioned in there.

Next, have you talked with your boss (if he isn’t one of the culprits) and/or senior management? From a legal perspective, something like your case might not even get very far in the courts if you haven’t made any complaints

to anyone. A court would ask why you had not notified someone, especially if there is a written policy in place.

From a practical standpoint, a situation like this is always best addressed by starting in-house. If you don’t feel comfortable talking with the people involved (if you haven’t already), then do go to your boss. In most professional environments, men would tend to be very sheepish if a woman came to them and asked them to stop telling the “dirty jokes” in her presence or close proximity. There are some work environments (which I won’t get into), however, where this type of “locker room” behavior is pervasive and “accepted.” Typically, in this situation you shouldn’t get expectations high that your requests, even to senior management, are going to generate much action. I had a female friend who once worked for a car dealer (who was a “Christian”) where this type of thing went on throughout the dealership. Unless he was never there, it would have had to be obvious, but he did nothing to stop it.



So generally, how do courts view the hostile environment area? I could be easily proven wrong, but I would tend to believe that they would require much more than a few off-color jokes or profane language to decide that sexual harassment had occurred, and with good reason. We do have those people who think everything is about them and are ready to pursue a legal remedy at the drop of a hat. But as in many “gray” areas of the law, this has something to do with the mindset of the judge.

I will give you an example of what most would regard as an extreme case, and this is a true one. A lady once claimed sexual harassment because a coworker had a picture of his wife in a bikini which he kept *in his cubicle*, not in general public view. Is this extreme? Most, if not all of us, would say yes, but such cases do occur. I believe that anytime something like this happens, it starts to slowly erode the



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foundation the law is built on (but that will be all for my political commentary).

In today's work environment, there are many companies who are particularly sensitive to this area of the law. There are many times where totally innocent comments — such as a man complimenting a lady by saying, "You look nice" — are taken totally out of context. As such, many companies will even council against any comment that could be taken in more than one way. There are some people like myself who are more demonstrative. I will hold a person's elbow many times when shaking their hand or put my arm around their shoulders (men and women) to be friendly, say good job, etc. But some people will view that negatively, so it is always wise in a work environment to err on the side of being too conservative.

There are also many areas where there are many more considerations than sexual harassment, though that can certainly be one of the components:

- Counseling or speaking with a member of the opposite sex alone behind closed doors.
- Extended travel together of a man and woman alone who are professional associates.
- A dining environment when a man and woman are out to dinner in a professional setting.
- Provocative dress.
- Etc.

Lastly, you notice it that the law talks about a "hostile or abusive environment." Abusive behavior or constant belligerence can fall under sexual harassment as long as it is aimed exclusively at one sex. The behavior doesn't necessarily have to be sexual in nature.

A final note to employers: If you don't have a sexual harassment policy, shame on you. If you have an employee who has complained about another employee, address the situation immediately. Don't sit on it figuring it will just go away. If someone has complained to you and nothing is done, you could be subject to much more severe problems. If you are senior management or ownership in this type of environment, change it now before it blows up in your face. Even if no lawsuits are filed, it is just poor business practice and very offensive.

Here's Wishing You Terrific Hunting,

Bill

### About the Author

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