

University Liability and Responsibilities for  
Sexual Harassment on Campus

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## Introduction

Sexual harassment is a form of sexual discrimination under Title IX of the Education Amendments of 1972 and Title VII of the Civil Rights Act of 1964. Within the educational environment, sexual harassment is defined as unwelcome behavior of a sexual nature that interferes with a student's ability to learn, study, work or participate in school activities. In the employment arena, it is unwelcome behavior of a sexual nature that interferes with an employee's work performance or creates a hostile/intimidating work environment (U.S. Law, Accessed 11-29-08, [http://www.uslaw.com/us\\_law\\_article.php?a=254](http://www.uslaw.com/us_law_article.php?a=254)).

Today we know that sexual harassment is widespread on America's campuses. While both male and female members of university and college communities can be the target of sexual harassment, women are by far the largest group and the most negatively affected. For example, according to recent research (AAUW Educational Foundation) approximately 68 percent of female students who have been sexually harassed say they felt somewhat or very upset about the incidents compared to 35 percent of male students in the study. Female students also reported being more likely to experience physically aggressive sexually harassing behaviors such as "grabbing, pinching or pulling." These violations undermine women's opportunities for educational and professional achievement as well as having lasting negative effects on their personal lives (Kinzie, 2006).

A more complete definition of sexual harassment (Office for Civil Rights) <http://www.ed.gov/legislation/FedRegister/other/2000-4/110200b.html>) is: unwelcome sexual advances, requests for sexual favors, verbal or other expressive behaviors, or physical conduct commonly understood to be of a sexual nature, when:

- A. submission to or toleration of such conduct, on or off campus, is made, either explicitly or implicitly, a term or condition of instruction, employment or participation in other University activities;
- B. submission to or rejection of such conduct is used as a basis for employment or for academic decisions or assessments affecting the individual's status as an employee or student; or
- C. such conduct has the purpose or effect of unreasonably interfering with an individual's status as a student or employee or creates an intimidating, hostile or offensive work or educational environment.

In summary, sexual harassment is defined as "unwelcome verbal, visual, or physical conduct of a sexual nature that is severe or pervasive and affects working conditions or creates a hostile work

environment.” (Equal Rights Advocates, Accessed 9-1-09 <http://www.equalrights.org/publications/kyr/shwork.asp>). Sexual harassment is a form of discrimination expressly prohibited by law. It is a violation of Title VII of the federal Civil Rights Act of 1964 and Title IX of the Educational Amendments of 1972 (U.S. Equal Opportunity Commission).

There is no typical sexual harasser. Sexual harassment can be committed against a person of either sex by a person of either sex. A person can be sexually harassed by a person of the same sex. Anyone can be harassed regardless of age, appearance, gender or economic status. Sexual harassment can occur between a supervisor and an employee, among colleagues or employees, among students or between a student and faculty or staff member. It can occur between vendors or persons temporarily on campus and an employee, student, faculty or staff member. It can occur on or off the job or on or off campus (Sexual Harassment Support).

A harassment claim can be brought by a third party when the sexual behavior of others has the purpose or effect of substantially interfering with that party's welfare, academic or work performance (Workforce Management Resource Center). To constitute harassment, the behavior must be gender-based or sexual in nature. Because sexual attraction may play a role in the day-to-day social interactions between employees, "the distinction between invited, uninvited-but-welcome, offensive-but-tolerated, and flatly rejected" sexual advances may well be difficult to discern (*Barnes v. Costle*, 561 F.2d 983, 999, 14 EPD ¶ 7755 [D.C. Cir. 1977]). Thus, there is no bright line test for determining sexual harassment (Burke, 2004). Because what is inappropriate to one person may be perfectly acceptable to another, a *reasonable person standard* is used to determine if the conduct would be offensive to a person of average sensitivities. It is considered harassment if a *reasonable person*, in the same or similar circumstances as the victim, would consider it so. Some courts have adopted a *reasonable woman standard* instead, to recognize the difference between how a male and female might react to the same behaviors (Accessed 3-29-09 [http://www.spu.edu/depts/hr/supervisor/sexhar/what sexual harassment is.htm](http://www.spu.edu/depts/hr/supervisor/sexhar/what_sexual_harassment_is.htm)).

Sexual harassment does not have to be a request or demand for sexual relations. It can be verbal, non-verbal or physical behavior and can include any unwelcome (i.e., the person did not solicit or incite the conduct and regarded it as undesirable or offensive). Sexual harassment is more about power than it is about sex and includes, but is not limited to, such behaviors as sexually suggestive or explicit jokes, innuendos or comments; sexually suggestive or explicit pictures, objects or graffiti; sexually suggestive questions, sounds or gestures; inappropriate physical conduct or contact; rating or spreading rumors about a person's sexuality; humor or jokes about sex or females/males in general; pestering a person for dates or sex; letters, notes or other materials of a sexual nature; displaying sexually explicit or graphic materials; stalking a person inside or outside the workplace or campus and attempted or actual sexual assault. Sexual harassment can occur in a variety of circumstances. The victim as well as the harasser may be a woman or a man. The victim may be the same or opposite sex of the harasser. 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, such as a third party. Unlawful sexual harassment may occur without economic injury to or discharge of the victim. In all cases, the conduct of the harasser must be unwelcome (Accessed 4-5-09. <http://www.eeoc.gov/policy/docs/currentissues.html>).

## Distinguishing Between Sexual Harassment and Friendly Behavior

If the behavior is perceived as unwelcome it is no longer friendly behavior. Any behavior that makes another person feel uncomfortable or upset is most likely sexual harassment. The fact that the person did not intend to sexually harass another is generally not considered a defense because intent is ordinarily irrelevant with harassment claims. In most cases, it is the effect and characteristics of the behavior that determine if it constitutes sexual harassment. Furthermore, courts do not consider a person's failure to object to certain sexual behavior a defense to a subsequent charge of harassment (Accessed 4-13-09, <http://www.personal.ceu.hu/comp/harassment.htm>). There are some specific questions that individuals should ask themselves in an effort to avoid sexually harassing acts:

- Would my comments/behavior change if my spouse, child, sibling or parent was in the room?
- Would I want someone else to use the same language/behavior with my spouse, child, sibling or parent?
- Would I want any of my behaviors to be the subject of a column in the local newspaper or to appear on the evening news?

## Consensual Relationships on Campus

In contrast to sexual harassment, a consensual relationship is one in which a romantic and/or sexual relationship exists between a faculty member and a student under his/her control or between a supervisor and an employee under his/her control or any relationship where a power differential may compromise the subordinate's free choice. These types of relationships are inappropriate and unprofessional behavior and should not occur. Others may view such a relationship as one of preferential treatment and detrimental to themselves or others. A faculty member or supervisor who enters into a sexual relationship with a student or an employee under his/her control, where a professional power differential obviously exists, must realize that if a charge of sexual harassment is subsequently lodged, the burden will be on the faculty member or supervisor to prove immunity on the grounds of mutual consent (Bellas and Cossett, 2001).

## Types of Sexual Harassment

Quid Pro Quo ("this for that"). A supervisor, administrator or faculty member asks an employee or student for sexual favors or hints that the employee's job benefits or student's grade or evaluation will be enhanced if he/she complies or will be lessened if he/she does not comply. This form of blatant sexual harassment is referred to as quid pro quo sexual harassment since it involves a "trade": a positive (or negative) personnel consequence for agreeing/disagreeing (respectively) to make the trade.

Quid pro quo cases are usually the most flagrant and clear cut kind of sexual harassment. Typically the person involved is a supervisor or someone with formal power (i.e., faculty member or administrator) who can provide or withhold a benefit, service or evaluation and thus has the power to harm the person involved. One instance of quid pro quo harassment is sufficient to constitute a violation of Title VII (Accessed March, 2008, U. S. Law Library, <http://www.uslaw.com/library/article/bshQuidProQuo.html>).

Hostile Environment. Any action of a sexual nature by an administrator, faculty member, supervisor, co-worker or student that is unwelcome or unwanted and makes someone feel uncomfortable on the job or in the classroom and/or interferes with the employee's work or student's learning and creates an intimidating, hostile or offensive working environment.

Hostile environment harassment may include, but is not limited to, the following:

- discussing sexual activities or dates
- comments on physical attributes
- displaying nude or suggestive pictures
- offensive staring or ogling
- using demeaning or inappropriate terms

Hostile environment harassment is far more prevalent than the quid pro quo type. It is also harder for some people to acknowledge because it includes many behaviors that are often seen as "normal" or "boys will be boys, men will be men" behavior. The harasser who creates a hostile environment does not have to be a person with formal power and the behavior does not have to be sexual. It could be degradation, intimidation, general comments about the inferiority of females/males, physical threats or verbal abuse.

Courts look at hostile environment harassment as part of a continuum: the more severe the behavior, the fewer times it needs to be repeated to constitute harassment; the less severe the behavior, the more times it needs to be repeated. While a one-time comment or incident may not be sexual harassment, a pattern of such probably is (The Electric Law Library, <http://www.lectlaw.com/def/h016.htm>).

Gender harassment is a form of hostile environment harassment recognized by EEOC and the courts. It consists of negative behavior directed to or impacting only one gender. Such behavior can include men or women making negative remarks about the opposite sex. Gender harassment has little to do with sexual matters and is not designed to elicit sexual cooperation, but rather to insult and degrade. It is similar to racial harassment in its purpose and practice. Women who study in non-traditional areas (e.g., science and engineering) or who enter or work in male-dominated fields are particularly susceptible to gender harassment (FCC, Accessed 1-18-09, <http://www.fcc.gov/owd/understanding-harassment.html>; Roberts and Mann, Accessed 1-18-09, <http://www3.uakron.edu/lawrev/robert1.html>).

## Liability for Sexually Harassing Behavior

### University's Liability as an Employer Pursuant to Title VII

In three recent decisions, the United States Supreme Court has held that Title VII and Title IX provide different standards of liability for sexual harassment. The Supreme Court stated that the distinction between quid pro quo and hostile environment harassment is simply used to explain that Title VII is violated by either explicit or constructive alterations in the terms or conditions of employment and to explain that constructive alterations must be severe or pervasive to be actionable (*Burlington Industries, Inc. v. Ellerth* 524 U.S. 742). The terms are only relevant when there is a threshold question of whether the complainant can prove discrimination in violation of Title VII. It held that the terms are not controlling on the issue of employer liability.

The Court adopted a *bright-line test* for employer liability when a supervisor sexually harasses an employee. It held that sexual harassment by a supervisor is not conduct within the scope of employment but the employer is still liable because the supervisor was aided in accomplishing the tort by the existence of the agency relationship between him/her and the employer. An employer is subject to vicarious liability for an actionable hostile environment created by a supervisor with immediate or successively higher authority over the employee. If the harassment results in the employee's dismissal, demotion or other tangible job detriment, the employer is automatically and strictly liable for the supervisor's actions. There is no affirmative defense available when the harassment culminates in a tangible employment action. However, if the supervisor makes harassing threats and doesn't carry them out, the employer can reduce or escape liability by showing that: (1) it exercised reasonable care to prevent and promptly correct any sexually harassing behaviors; and (2) the employee unreasonably failed to take advantage of any preventive or corrective measures offered by the employer or failed in other ways to avoid the harm. Thus, a complainant can establish sexual harassment even though he/she suffered no tangible job detriment.

To satisfy the first element of the affirmative defense, clearly articulated anti-harassment policies and procedures should be adopted and widely disseminated. Furthermore, complaint procedures should be available, prompt and effective and should include a mechanism to ensure that the complainant is not forced to file his/her complaint directly with the harasser. The employer must ensure that employees at distant job sites also have access to its policy and grievance procedures. The second element is normally satisfied if the employee failed to use the employer's complaint procedure. The defense is subject to proof by a preponderance of the evidence (i.e., more likely than not).

The court also offered more guidance on what constitutes discrimination on the basis of sex in violation of Title VII. It stated that Title VII does not prohibit all verbal or physical harassment in the workplace. Workplace harassment is not automatically discrimination because the words used have sexual content or connotations. Simple teasing, offhand comments and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the terms and conditions of employment. The critical issue is whether members of one sex are exposed to disadvantageous terms or conditions of employment to which members of the other sex are not. To be actionable under Title VII, a sexually objectionable environment must be both objectively

and subjectively offensive (i.e., one that a reasonable person would find hostile or abusive and one that the victim in fact did perceive to be so). To determine whether an environment is sufficiently hostile or abusive, courts look at all of the surrounding circumstances, including: the frequency of the discriminatory conduct, its severity, whether it is physically threatening or humiliating and whether it unreasonably interferes with an employee's work performance.

#### Liability as a University Pursuant to Title IX

A university can be held liable in damages in cases involving a teacher or administrator's sexual harassment of a student. The Court also adopted a bright-line test (Burke, 2004) with regard to a school's liability for damages under Title IX. The Court held that actual notice is required whether the government or a student seeks to enforce Title IX. However, it set out additional requirements for students seeking to prove sexual harassment to receive a damages remedy. The student must show that a person with authority to correct the problem had actual knowledge of it and, with deliberate indifference, failed to respond adequately. Thus, damages may not be recovered unless a school official who, at a minimum, has authority to institute corrective measures on the district's behalf has actual notice of, and is deliberately indifferent to, the teacher's misconduct. The Court said that an institution's lack of a grievance procedure did not itself constitute discrimination under Title IX so an institution is not automatically liable because it doesn't have one. It also held that a university's failure to comply with Department of Education regulations to adopt and publish grievance procedures does not establish the requisite actual notice and deliberate indifference. This holding applies to students who suffer harassment at the hands of other students as well as harassment by a teacher or an administrator

Despite the deliberate indifference standard adopted by the Court, it would be unwise for institutions to relax their policies and procedures for handling students' complaints of harassment. Universities should initiate, or sustain, strong internal procedures to address sexual harassment and to provide avenues for the filing of complaints. Furthermore, universities should ensure that participants in distant programs have access to sexual harassment policies and grievance procedures just as individuals on the main campus do. Title IX is not the only option available to students who are sexually harassed by their teachers. Harassed students may be able to sue under state civil rights or tort provisions. Students in public institutions may also be able to sue under section 1983 of the Reconstruction Civil Rights Act that bars discrimination by entities acting on behalf of the state. Additionally, the Department of Education and other agencies still have the authority to strip federal funds from universities that allow sexual harassment to go unpunished.

#### Responsibilities of Supervisors Pursuant to the University's Policy on Sexual Harassment

Supervisory personnel must maintain an atmosphere that discourages sexual harassment and ensures that the university policy is enforced in their areas. This is accomplished by discouraging all behavior that might be considered sexual harassment and responding promptly to sexual harassment complaints. University officials who condone acts of sexual harassment or

instances of related retaliation are subject to disciplinary action. Following are some guidelines that all employees in a supervisory capacity should know and follow:

- Discourage all behavior that might be considered sexual harassment. Encourage employees to promptly report complaints of harassment. Take immediate corrective action if you witness any sexually harassing behavior.
- Set a good example. Do not use, or allow your employees or students to use, sexist, stereotyped or sexual remarks.
- Communicate the policy to all individuals in the department periodically. Make it clear what sexually harassing behavior consists of and that it is unacceptable and will not be tolerated.
- Respond promptly and appropriately to any harassment complaint involving any employee or student under your jurisdiction that is brought to your attention.
- Keep the identities of the complainant and respondent confidential and do not disclose the facts of the situation to others in the workplace or department unless it is to report the incident to the administrative officer and/or your supervisor.
- Do not excuse the respondent's behavior by calling it something other than what it was (e.g., "He used poor judgment," "She was unprofessional," "It was just a bad management decision.") or try to correct the behavior as if it were something other than harassment.
- Know that it is not necessary to prove that the behavior did occur, only that it more likely than not occurred, in determining whether the complainant's allegations have merit.
- Inform the complainant and respondent in writing of any actions taken to resolve the complaint.
- Prevent or stop retaliation. Retaliation may include, but is not limited to, the following:
  - Unfair grading or evaluation
  - Unfair or increased work or class assignments
  - Having information withheld or made difficult to obtain
  - Not informing the person of important events or meetings
  - Not recommending the person for a promotion or a scholarship/academic award
  - Public or private ridicule
  - Oral or written threats, bribes or intimidation
  - Destruction of property
  - Stalking or further harassment
- Be aware of alternative routes if the complainant prefers to file a complaint outside of the workplace, department or University.



- Be familiar with the appeal process for both parties to follow if dissatisfied with resolution of the complaint.
- Submit a written report of the incident to the Associate Chancellor (Diversity). The report should include:
  1. Names of the complainant, respondent and witness(es) interviewed;
  2. A summary of the relevant facts;
  3. What determination was made;
  4. Actions taken to resolve the complaint, including any disciplinary action.

#### Responding to a Complaint:

1. After receiving the complaint, if possible, send a memo to each party stating that a sexual harassment complaint has been received and detailing how the investigation will proceed. Include a statement on the University's policy on confidentiality and retaliation.
2. Set up a separate interview with each party as promptly as possible.
3. Talk to the complainant in a private, secure place. Express sympathy in a neutral manner (e.g., "This may be hard for you to talk about," "I can see you are upset," "I'm sorry to have to ask you these questions."). Question him/her in an objective, non-judgmental way. Allow plenty of time. Have a witness present during the interview if possible. (A team of one person of each sex is ideal.) Keep a record of the interview. Gather all of the relevant facts including:
  - Who is he/she complaining about?
  - What happened? Specifically, what are the offending behaviors?
  - When did this happen?
  - Where did it happen?
  - Were there any witnesses to the incident(s)?
  - How did the incident(s) make the complainant feel? Did it affect his/her work or ability to learn? Does the individual have any written documents or other records relevant to the complaint (e.g., notes or letters from the respondent, audio or video tapes, diaries, photos, gifts, etc.)
  - Has the complainant talked to anyone else about this complaint either inside or outside of the University? If so, who? When? If someone else in management has already been notified of the claim, what did they do?
  - Has the person done anything themselves to attempt to resolve the situation?
  - Does the complainant have any suggestions on how this matter could best be resolved or a preferred resolution? Make it clear this does not mean you will do what he/she is suggesting but that you are exploring options.

Tell the complainant the University takes such matters very seriously and that you will look into the matter promptly. Explain how the investigation will proceed. Give the complainant a time frame so he/she will know what to expect. Ask that the complainant not discuss the matter with others in the workplace or department and state the University's position on confidentiality and retaliation. Tell him or her to come to you immediately if any retaliation occurs. Do not discuss the merits of the complaint.

Tell the complainant that allegations of sexual harassment are very serious and any complaint made falsely and/or maliciously will result in discipline to the complainant. If possible, and in all cases in which the complaint is very complicated, ask the complainant to provide a signed written statement. Document what was reported in the interview.

If the complainant requests that nothing be done in response to the complaint, ask what he/she is worried about. The person's reluctance could be caused by fear of retaliation or it could be that the person simply doesn't want to see the respondent get in trouble. Explain that the University cannot ignore what is happening. Explain that it has a moral and legal obligation to deal with the problem and that it does not want anyone else to experience what he/she is experiencing. State that the University will do everything possible to prevent retaliation. Complainants are more willing to go forward if the institution clearly expresses its commitment to prevent and respond to retaliation. If the complainant requests that no disciplinary action be taken against the respondent, place a written statement in the file documenting this request and give a copy to the complainant. This will safeguard the University should legal action be taken at a later date. A thorough investigation should be made and the University should take action, regardless of the complainant's wishes, if there is evidence the sexual harassment policy has been violated.

Follow-up with the complainant to see if he/she has any additional information, to ensure no retaliation is occurring and to provide updates about the investigation. Seek assistance in handling complicated complaints or if you are uncertain about what to do

4. When speaking with the respondent, be prepared for anger, denials and defensiveness. Provide the facts as alleged by the complainant and ask whether they are true. Describe the alleged behavior and why it may be a violation of the University's policy. Do not label it as harassment. Question the respondent about each specific allegation. Convey concern for the difficult nature of the meeting in a neutral manner (e.g., "This may be hard to talk about," "I can see that you are upset," "I'm sorry to have to ask you these questions."). Question him/her in an objective, non-judgmental way. Give the respondent the opportunity to tell his/her side of the story. If the complaint is in writing, share a copy with the respondent. Make a written record of his/her statement. Be very specific about any admissions of certain behavior-s the respondent makes. Ask if there are any witnesses you should interview or if there is any other evidence to rebut the allegation(s). Do not discuss the merits of the complaint. Make it clear that the University considers this as a very serious matter. Outline how the investigation will proceed. Explain that the complaint will be found to have merit if it is more probable than not that it occurred and that the University will take appropriate disciplinary action if the claim is found to have merit. If applicable, state that disciplinary action may include the employee's discharge or student's expulsion from the University.

Ask that the respondent not discuss the matter with others in the workplace or department and state the University's position on confidentiality and retaliation. Inform the respondent that no retaliatory action on his/her part will be tolerated and, if the individual retaliates in any way against any involved party, the University will consider immediate discharge or expulsion.

Advise the respondent to avoid unnecessary contact with the complainant and to not discuss the allegations of the complaint with him/her. Follow-up with the respondent to see if he/she has any additional information, to ensure no retaliation is occurring and to provide updates about the investigation.

5. Interview any witnesses that have been identified by either party. Keep a written record of each witness' statement to you. Ask him/her not to discuss the matter with others in the workplace or department and state the University's position on confidentiality and retaliation. Tell him/her to come to you immediately if he/she experiences any form of retaliation.
6. Review and evaluate all information relevant to the complaint. Is it possible to determine whether or not the University's policy concerning sexual harassment was violated? Is it probable that the complaint is valid? It is not necessary to prove beyond a reasonable doubt that the incident occurred, only that it is more probable to have occurred than not to have occurred. How severe was the conduct? Was the conduct repeated? What was the intent of the respondent? While lack of intention to harass will not excuse the behavior, this may impact your course of action. What is the relationship between the two parties? Was there a prior relationship between the two? Did the complainant in any way provoke the behavior? Did the complainant in any way communicate that the behavior was welcome? What was the effect of the behavior on the complainant?

A situation that hinges on the credibility of one person over another is very difficult. Many alleged harassers will admit the facts of their conduct but disagree as to whether it constitutes sexual harassment. Often discussing the behavior with the respondent, without labeling it as harassment, will result in him/her admitting to it. Then, if appropriate, sexual harassment can be used to label the behavior and you can explain how it violates the University's policy. If the respondent denies that the conduct occurred, consider the preponderance of evidence. What motivation is there for the complainant to lie? Did the complainant tell anyone about the situation or keep notes? Is one party's story more internally consistent? Has anyone else ever accused the respondent of similar conduct?

7. Review personnel or permanent records for more clues to the credibility of the parties.
8. Make a decision, based on careful consideration of the facts, regarding the validity of the complaint. There are three possibilities:

The evidence is sufficient to support a finding that the sexual harassment policy was violated.

OR

The evidence is insufficient to support a finding that the sexual harassment policy was violated.

OR

The evidence is insufficient to support a finding that the sexual harassment policy was violated but sufficient to show another policy was, so disciplinary action is warranted.

9. Take appropriate action to resolve the complaint. Consult with others who need to be involved in determining or implementing the resolution (e.g., Dean or Vice-Chancellor, Affirmative Action, University Legal Counsel, etc.).
10. Notify the complainant in writing of the outcome of the investigation. Give him/her a basic explanation of the corrective action taken, if any. State that the University's policy does not tolerate retaliation and to please contact you if any occurs or if the behavior does not stop or it begins again. Emphasize that the allegation(s), investigation and corrective action taken, if any, must be kept confidential. Inform the complainant that if dissatisfied, he/she may request review of the decision by the next level supervisor or administrative officer or by Affirmative Action. He/she may also exercise the option of filing a complaint with an external agency in addition to, or instead of, the request for review.

Discuss with the complainant how he/she feels about going back into the workplace, classroom or department and identify any internal or external support sources available to assist him/her. Discuss his/her feelings on how the investigation was handled, how he/she was treated and any possible suggestions on improving the complaint process.

11. Notify the respondent in writing of the outcome of the investigation and, if relevant, of the recommended disciplinary action. If the recommended disciplinary action is not discharge, advise the respondent that he/she has been found guilty of sexual harassment and the proposed disciplinary action. If it is discharge, advise the respondent that there has been a finding of sexual harassment and that he/she will be advised shortly of the proposed recommended disciplinary action.

Make sure the respondent understands what the University considers harassment and what is considered to be retaliation against the complainant and/or others involved in the investigation. Discuss possible consequences with the respondent if he/she retaliates, continues to engage in the unacceptable behavior and/or later sexually harasses the same or another employee. Emphasize that the allegation(s), investigation and disciplinary action must be kept confidential. Inform the respondent that he/she may appeal the decision and/or disciplinary action taken through the appropriate grievance procedure.

12. Submit a written report of the incident to the Associate Chancellor (Diversity). The report should include:
  - Names of the complainant, respondent and witness(es) interviewed;
  - A summary of the relevant facts;
  - What determination was made; and the
  - Actions taken to resolve the complaint, including any disciplinary action.

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 providing sexual harassment training to their employees and by establishing an effective complaint or grievance process and taking immediate and appropriate action when an employee complains.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on sex or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under Title VII (U.S. Equal Opportunity Commission)

### Brief Case Studies

Following are some brief examples related to the above discussion. These examples might be useful for in-class cases. Through analysis and discussion, students will gain a better understanding of the manner in which the law applies in real-life cases.

#### Case #1

Amanda, a first year student, was having trouble with her chemistry class. She decided to go to her teaching assistant, John Collins, for extra help. After a couple of tutorial sessions, John asked Amanda out. She was flattered but turned him down because she had a boyfriend. John continued to ask her out despite stronger and stronger rejections from Amanda. Finally, Amanda felt so uncomfortable that she stopped going for help and even skipped her afternoon lab because John was her lab technician. Her grades slipped. When she came to talk to you, her adviser, about next semester's classes, you asked how chemistry was going. Corrine burst into tears and told you what had been happening.

- a. What should you and/or the University do?
- b. Is this sexual harassment? If so, what kind?
- c. What liability could emerge from this situation?

#### Case #2

Jennifer works as an administrative assistant. Many of her male co-workers and a few of her female co-workers enjoy engaging in sexual banter and horseplay in the office. They often trade stories about their sexual exploits, kid about each other's sexual prowess and even grab at each other's body parts. Jennifer is very upset and offended by this conduct; however, she does not communicate this to anyone and, at times, she joins in the sexual banter herself in order to get along with these individuals.

- a. Can Jennifer bring a charge of sexual harassment against her co-workers?
- b. The co-workers' conduct would be considered which type of harassment?

### Case #3

Lisa is spending the semester in England with the University's study abroad program. She's taking classes at a European institution to forward her international relations degree. Lisa did not expect the way Professor Edwards would treat her and the other females in the classroom. Edwards either ignored or insulted them. He continually demeaned and denigrated women by openly questioning their intelligence, ability and seriousness as scholars and by publicly ridiculing their projects. All in all, he made it clear that they were unwelcome in his classroom. Lisa and several other females in Edwards' class were too intimidated to express their opinions. She decided to report the situation to you, her study-abroad adviser at the home University. You immediately took the complaint to the administration.

- a. What should you and/or the U.S. University do?
- b. What kind of harassment, if any, is Lisa experiencing?
- c. What liability could attach to the U.S. University?

### Case #4

Russ is a fourth year Ph.D. student who is well into the final writing stages of his dissertation. Belinda Rogers has been his adviser for three years. Russ and Dr. Rogers are required by the University to meet on a regular basis to discuss his progress. About mid-way through the semester, Dr. Rogers suggests that they begin meeting at her home during the evening for the "sake of convenience." Russ accepts and thinks nothing of it until, one evening, Dr. Rogers asks him to stay for a nightcap. He stays. After a couple of drinks, Dr. Rogers tries to seduce him. Russ is stunned and, after mumbling a lame excuse, abruptly leaves. For the next few months Russ avoids all but formal contact with Dr. Rogers. During these meetings, he discovers that she is not reading or commenting on his dissertation draft. As his deadline nears he finds that his requests for recommendations and career assistance are being ignored and his repeated phone calls are unreturned. If Russ is unable to complete his dissertation his career opportunities in sociology will be seriously undermined. Russ goes to you, the head of the department.

- a. What should you do?
- b. What remedial action should be taken on Russ' behalf?
- c. What liability could attach to the University?

### Case #5

Tom Smith sometimes makes comments to his secretary, Ann Jones, about how attractive she is. She never responds when he makes these comments. One day, Tom suggests that the two of them go for drinks and to dinner after work. Ann makes clear that she wants to keep their relationship purely professional and would therefore prefer not to go out with him. Tom says that he understands. Two weeks later, Ann receives her annual performance evaluation and it is unusually low. Ann is surprised because Tom has never indicated any dissatisfaction with her work. She asks Tom why he gave her such a poor evaluation. He says that if she would just be more "cooperative" with him then his evaluation of her work would improve. Ann asks if the "cooperativeness" that Tom desires is sexual in nature. Tom just smiles and says "You figure it out."

- a. What type of sexual harassment, if any, has Tom committed?
- b. Is Tom's employer liable for his harassment of Ann?
- c. Must Ann show a pattern of such conduct by Tom to establish sexual harassment?

#### Case #6

Elizabeth was among many other students piled into The Pub. After a few drinks, she went outside for a breath of fresh air. From the left she noticed four male students approaching, already a little worse for their heavy drinking. Elizabeth moved a little closer to the doorway. When the male students arrived, they circled her and began to call her a "whore," "bitch," "slut" and "bar trash." One of them reached out toward her face and, as she moved to evade his hand, another grabbed her rear end. Elizabeth broke free and ran back into the bar. She eventually made it back to her dorm room without further incident. She brought her complaint to you at the University's judicial office along with a full description of two of the students.

- a. Is this sexual harassment?
- b. What responsibility does the University have for the off-campus actions of its students?

#### Case #7

Mark, a young consultant to the human resources staff, has been spending a lot of time in and around the office. He has really fallen for Sarah, a summer intern, who has been in the front office answering the phones and filling in for people who are away. Sarah and Mark have had a romantic fling and because of your relationship with her, she has kept you informed of the progress of the affair. Sarah looks to you, her supervisor, as a mentor.

Recently Mark and Sarah spent a long holiday weekend together. Since then her behavior has changed. She is not her same perky, upbeat self. When you ask her what's up, she reports that Mark was a real animal during their weekend off. She says it became clear to her that his only interest in her was physical and that she is very uncomfortable with him now. She tried to talk to Mark about her feelings but his only response was to become angry and verbally abusive. Sarah told Mark it was not a good idea for them to continue to see each other. Now he is calling her at home and approaching her on his trips to the office. Sarah now says that she thinks she may not accept your offer to join the staff in the fall because of this situation.

- a. Is this a case of sexual harassment?
- b. What approach should you take with Mark?
- c. What steps should you take to protect Sarah's rights?

#### Case #8

You, the office manager, suspect that a young woman, Julie, is being harassed by your boss, Jim Davis. Davis is married but he is regarded as something of a ladies' man and has had a number of affairs, though never with anyone in the office. You have been told that Davis is hitting on Julie and that she politely refuses his overtures by reminding him that he is married. Julie has excellent skills and is fast becoming a real asset to the University. You have talked to her off the record on two occasions to "find out if there are any problems" and she reports that everything is fine. You are concerned that she is not telling you of her discomfort and you would like to have

the situation change. You talked to Davis and he said there is nothing for you to be concerned about -it's a private matter. He says that if she does not complain, you should not make it an issue. Your instincts tell you she is too fearful of losing her job to come forward.

- a. How do you handle the situation with Julie?
- b. What other options do you have with your boss Davis?

#### Case #9

Sharon Warner, your secretary, on one occasion went out to lunch with John, a co-worker. After that lunch, John began to pester her with unnecessary questions and hang around her desk. One time he asked her out for a drink after work but Sharon declined. Soon after this, John handed her a note at work that read: "I cried over you last night and I'm totally drained today. I have never been in .such constant turmoil. Thank you for talking with me. I could not stand to feel your hatred for another day." Sharon was shocked and frightened by this note. She asked a co-worker to talk to John, to tell him that she was not interested in him and to leave her alone. A few days later, John sent Sharon a three page, single-spaced typewritten letter which said, in part, "I know that you are worth knowing, with or without sex. I have enjoyed you so much 9ver these past few months. Watching you. Experiencing you from faraway. Admiring you. Don't you think it odd that two people who have never even talked together alone are striking off such intense sparks? I will write another letter soon." Sharon was very frightened by this note and complained to you.

- a. Can Sharon establish that John's conduct constituted sexual harassment?
- b. If so, what type of harassment did John commit?

#### Case #10

In the above scenario, after you verified Sharon's allegations, you told John to stop harassing Sharon and the director decided that John should be transferred to a different office for six months. As the sixth month approached, Sharon was very upset at the prospect of John's return to the same office. When she was told that the director would not reconsider its decision, she sought and received permission to transfer to a different office.

- A. Assuming John's original conduct did constitute sexual harassment, were the employer's remedial actions adequate?

#### Case #11

Which of the situations below involve sexual harassment?

1. Kelly received an A for the semester without turning in a single assignment. Everyone knew she was sleeping with her professor.
2. When Jenny led class discussion for History 302, several of her male classmates from the back of the classroom made sexually suggestive remarks and pointed and leered at her breasts.



3. Tina is a first year graduate student. Her adviser is Professor Bond, a new professor who is only recently out of school himself. Around mid-year the two begin dating.
4. Professor Sam Smedley called his student, Colin, into his office and offered to "re-evaluate" the test he did so poorly in, in exchange for engaging in sexual activities with him.
5. Crystal is a student intern working with an engineering firm. The firm is predominantly male and she soon finds nude pictures of women and vulgar jokes being placed on her lab station.
6. Jennifer was sitting in the student cafeteria when one of her male professors came by with his lunch tray and asked if he could join her.
7. Pam is a work-study student with the chemistry department. Her boss, the office manager, pesters her for dates. She turns him down. He continues to ask her out, leaves notes on her desk and makes it uncomfortable for her to come to work.

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