

**Sexual Harassment:
Prevention is the Key to an Inclusive and Respectful Workplace**



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At the end of this section you will be able to:

- Understand what qualifies as sexual harassment
- Identify harassing behavior
- Understand who can harass
- Prevent harassment in the workplace



Unlawful Harassment: Definition

- Harassment is any unwelcome verbal or physical conduct based on protected bases such as race, color, religion, sex (sexual and non-sexual) (sexual orientation), national origin, age (40 and over) disability, retaliation when:
 - The conduct culminates in a tangible employment action; or
 - The conduct was sufficiently severe or pervasive to create a hostile work environment



Sexual Harassment

Is a form of sex discrimination that violates Title VII.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

 this conduct explicitly or implicitly affects an individual's employment,

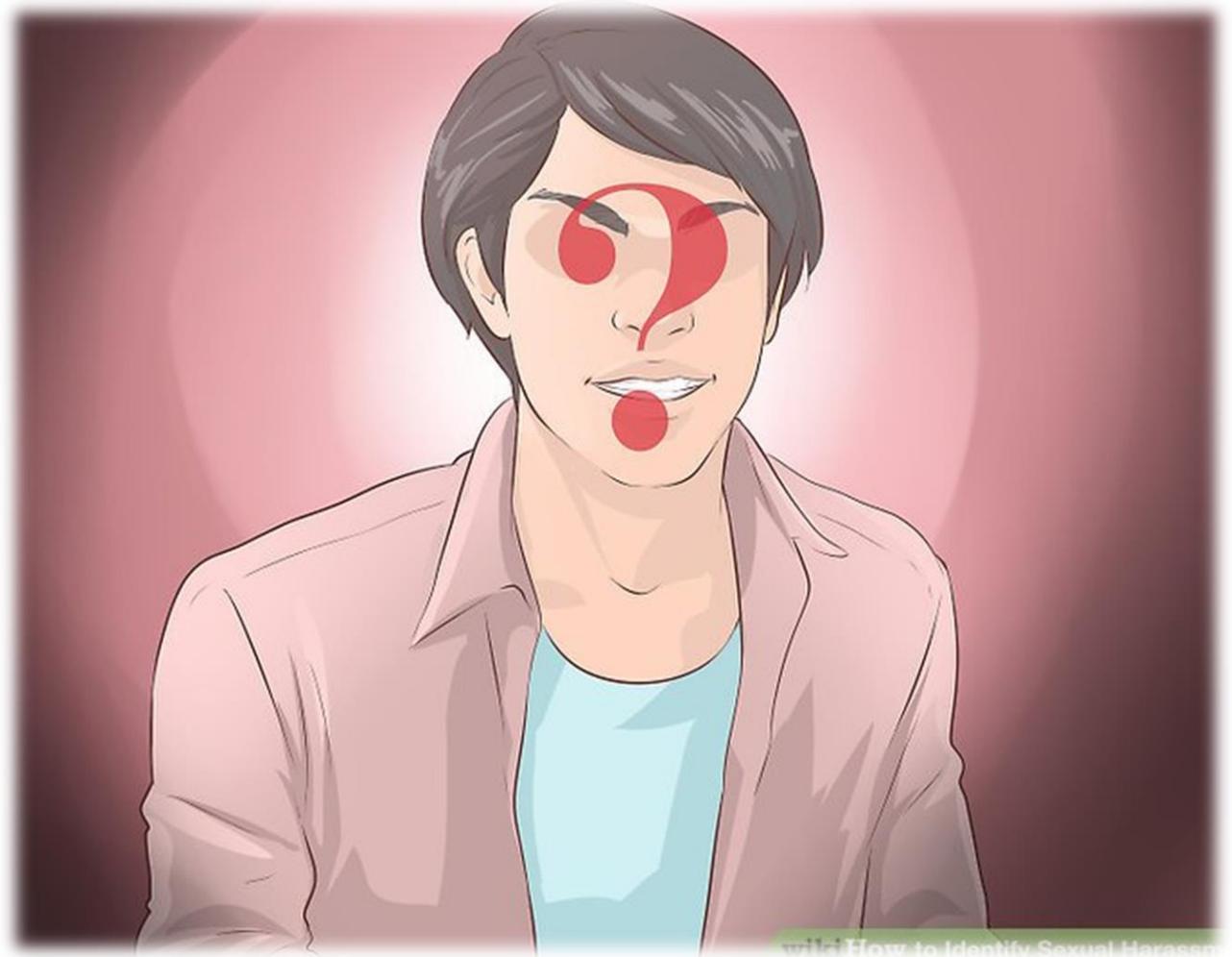
 unreasonably interferes with an individual's work performance,

 or creates an intimidating, hostile, or offensive work environment.



Sexual Harassment Can Occur in a Variety of Circumstances

- 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.
- 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.



Unwelcome Conduct

Unwelcome conduct is where the employee did not solicit or invite the conduct and regarded it as undesirable.

Critical Inquiry: Did the complainant explicitly or implicitly communicate that the conduct was unwelcome?

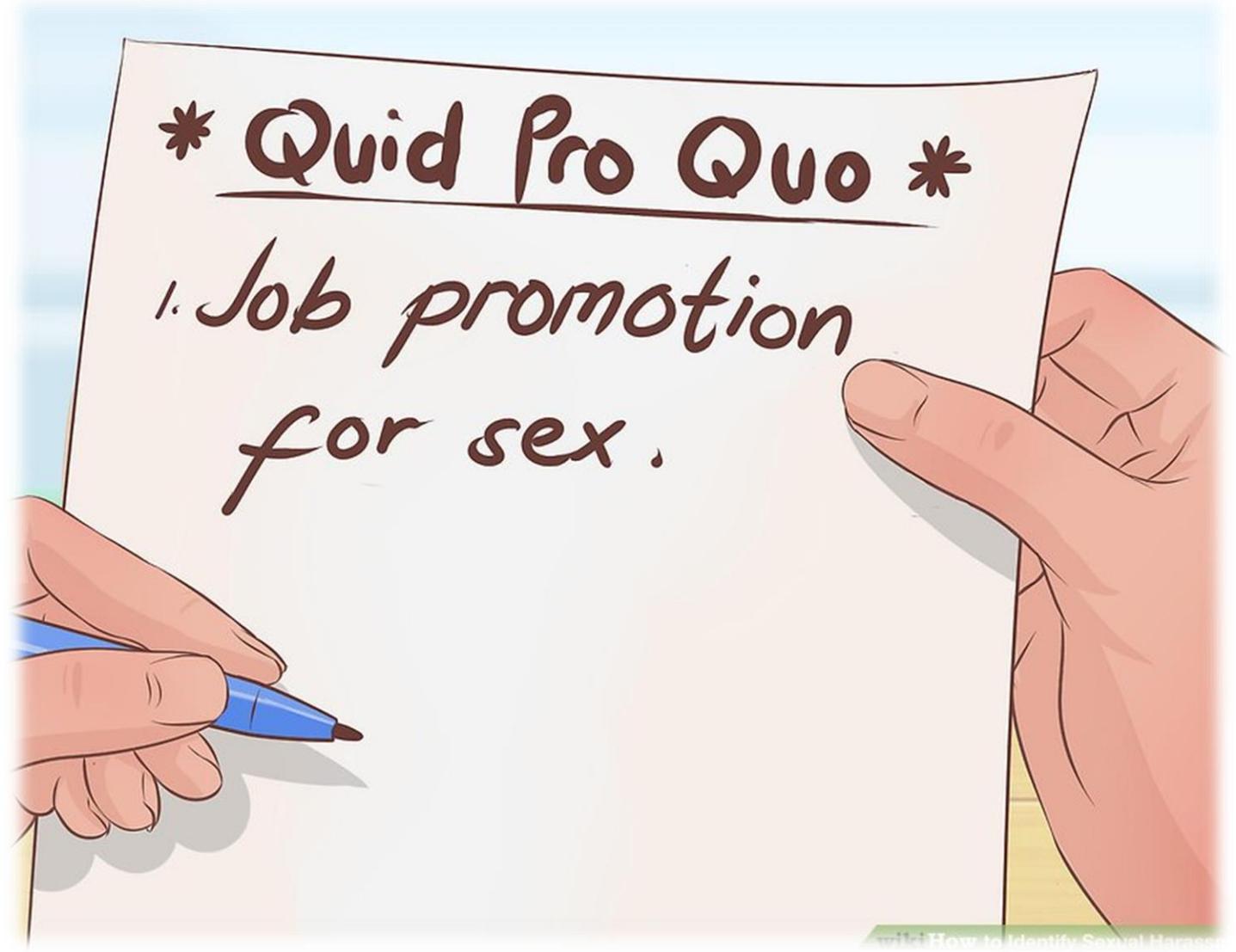
Submission does not mean the conduct was welcome

Active participation may defeat the claim



Sexual Harassment that Results in a Tangible Employment Action

- Usually inflicts direct economic harm.
- hiring and firing;
- promotion and failure to promote;
- demotion;
- undesirable reassignment;
- a decision causing a significant change in benefits;
- compensation decisions; and
- work assignment.



Sexual Harassment: Hostile Work Environment

- sexual jokes;
- sexual slurs and epithets;
- name calling;
- ridicule, and mockery;
- touching;
- physical threats;
- restricting your movement (such as blocking you or leaning over you at your desk); or
- displays of sexually suggestive cartoons or pictures.



Severe or Pervasive Conduct

- Behavior so objectively offensive as to alter the conditions of the victim's employment and create an abusive working environment.
- A single incident or group of isolated incidents will not be regarded as sexual harassment, unless the conduct is very severe. For example:
 - a single incident of touching someone's intimate body areas.



Frequency of the Harassment

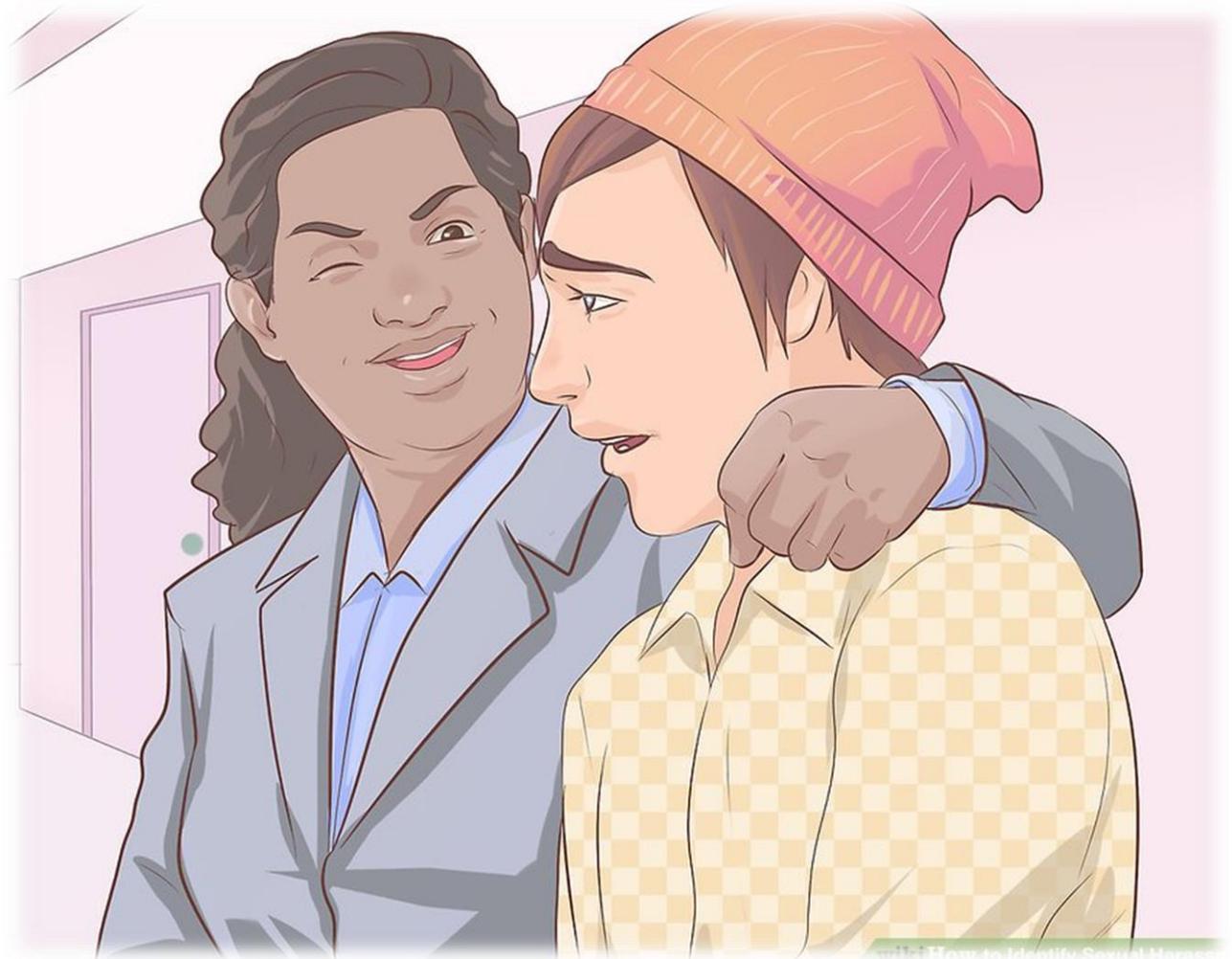
- Frequency will be analyzed together with severity.
- The more serious the conduct, the fewer incidents there need to be in order to qualify as sexual harassment.
- However, the less serious the conduct, the more incidents there will need to be.



Scenario 1

Larry alleges that he was subjected to sexual harassment by John (a male co-worker) when: John told Larry that a female co-worker, gave him sexual favors and performed oral sex on him; John stood behind a female and stared at her breasts, whispered explicit comments about her size, and comments about having sex with her; John told Larry that he went into a supply room with an employee from another department and had oral sex with her; and John said that Larry impregnated an employee from another division.

Did John's actions constitute sexual harassment?



Scenario 2

Mary alleged sexual harassment when a male-coworker: made comments about how attractive she was and in two separate instances the co-worker inappropriately touched her.

On the first occasion, grabbed complainant's face with both hands and kissed her, and in the second occasion, hugged her from behind. Mary reported the co-worker's action to her Acting Supervisor and the Employee Assistance Program Counselor. The agency instructed the co-worker to "cease and desist" all interactions with Mary, but took no action to physically separate Mary and the co-worker.

This two incidents are severe enough?

The agency should be liable for the co-worker behavior?



Scenario 3

William asserted that Betty, his supervisor, asked him to go out to lunch with him, and persisted in asking him out when he continued to reject her requests. According to William, more he rejected her, the angrier she became and the more she subjected him to unfair treatment in the work facility.

The investigative record reveals that Complainant and Betty previously had a long-term relationship and had lived together for a time. The couple broke up and Betty moved out of the home. Upon notice of William's claims, management conducted an immediate investigation, and interviewed seven prospective witnesses. None of the witnesses reported seeing any harassing behavior on the part of Betty. However, several witnesses indicated that Complainant showed jealous behavior towards Betty and believed that he was the harassing party. Management concluded that there were no harassing behavior toward William.

That the conduct had the purpose or effect of unreasonably interfering with his work performance and/or creating an intimidating, hostile, or offensive work environment?

There is a basis for imputing liability to the agency?



Recommendations:

Workplace Leadership and Accountability

- Employers should foster an organizational culture in which harassment is not tolerated, and in which respect and civility are promoted. Employers should communicate and model a consistent commitment to that goal.
- Employers should assess their workplaces for the risk factors associated with harassment and explore ideas for minimizing those risks.
- Employers should conduct climate surveys to assess the extent to which harassment is a problem in their organization.
- Employers should devote sufficient resources to harassment prevention efforts, both to ensure that such efforts are effective, and to reinforce the credibility of leadership's commitment to creating a workplace free of harassment.

Recommendations:

Workplace Leadership and Accountability

- Employers should ensure that where harassment is found to have occurred, discipline is prompt and proportionate to the severity of the infraction. In addition, employers should ensure that where harassment is found to have occurred, discipline is consistent, and does not give (or create the appearance of) undue favor to any particular employee.
- Employers should hold mid-level managers and front-line supervisors accountable for preventing and/or responding to workplace harassment, including through the use of metrics and performance reviews.
- If employers have a diversity and inclusion strategy and budget, harassment prevention should be an integral part of that strategy.

Recommendations: Policies and Procedures

- Employers should adopt and maintain a comprehensive anti-harassment policy (which prohibits harassment based on any protected characteristic, and which includes social media considerations) and should establish procedures consistent with the principles discussed in this report.
- Employers should ensure that the anti-harassment policy, and in particular details about how to complain of harassment and how to report observed harassment, are communicated frequently to employees, in a variety of forms and methods.
- Employers should offer reporting procedures that are multi-faceted, offering a range of methods, multiple points-of-contact, and geographic and organizational diversity where possible, for an employee to report harassment.

Recommendations: Policies and Procedures

- Employers should be alert for any possibility of retaliation against an employee who reports harassment and should take steps to ensure that such retaliation does not occur.
- Employers should periodically “test” their reporting system to determine how well the system is working.
- Employers should devote sufficient resources so that workplace investigations are prompt, objective, and thorough. Investigations should be kept as confidential as possible, recognizing that complete confidentiality or anonymity will not always be attainable.

Recommendations: Training

- Employers should dedicate sufficient resources to train middle-management and first-line supervisors on how to respond effectively to harassment.
- EEOC should review and update its anti-harassment compliance training modules used for Technical Assistance Seminars, Customer Specific Trainings, trainings for Federal agencies, and other outreach and education programs.
- Employers should consider including workplace civility training and bystander intervention training as part of a holistic harassment prevention program.

For More Information

https://www.eeoc.gov/eeoc/task_force/harassment/upload/report.pdf

