

Sexual Harassment at Work



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What Is Sexual Harassment?

Sexual harassment anywhere – at work, at school, on the street, etc. – is not just about sex. It is about the harasser being hostile toward the victim or abusing power over the victim because of the victim’s gender. In Washington, “gender” includes one’s sexual orientation and gender identity and expression. In most cases of sexual harassment, the harasser is a man and the victim is a woman, but men can be victims, too. Sexual harassment also happens in the gay, lesbian, bisexual and transgender community. Sexual harassment can happen between people of the same sex or people of different sexes.

Sexual harassment at work is a serious problem. It can make workers less productive. It can increase employee absenteeism and turnover. It can hurt the health and well-being of workers. In this publication, we call it “workplace sexual harassment.”

What Is Workplace Sexual Harassment?

There are two types of workplace sexual harassment. The first type is called “hostile work environment” sexual harassment, and the second is called “quid pro quo” sexual harassment.

Hostile Work Environment Sexual Harassment

Hostile work environment sexual harassment can happen in two ways:

1. Someone you work with makes you the target of unwelcome sexually suggestive or demeaning comments, repeated and unwelcome requests for dates, offensive gestures, offensive touching, jokes or pranks, intimidating behaviors, or pornographic materials. This behavior is directed at you *because* of your gender status (because you are a woman, a man, or transgender). These offenses must be severe *and/or* pervasive. This means that the harassment occurs often enough to affect your ability to do your job well OR the level of harassment is so bad that even one incident is enough to affect your ability to do your job well. You must also show that your employer is responsible for the harassment (either directly or indirectly). This includes conduct by your employer’s customers or vendors. For example, if one of your co-workers or a frequent customer makes offensive remarks, you have to show how your workplace is responsible for allowing their bad behavior.

2. The other way hostile work environment harassment occurs is if your employer provides *less favorable conditions of employment* to you than to your different-sex co-workers simply because of your gender status. This can include discriminatory hiring procedures, hours, wages, promotions, work schedules, work assignments, vacation or sick leave benefits, job evaluation, discipline, and termination (firing).

Quid Pro Quo Sexual Harassment

Quid pro quo sexual harassment happens when a supervisor or other manager asks or demands sexual contact from you in return for employment benefits or promotions.

It can still be sexual harassment even if you didn't say "no." If you felt pressured to have sexual contact because you were embarrassed to say no, or afraid you would lose your job, or afraid you would be punished at work, then your sexual contact could have been a form of illegal harassment. Your gender status does not have to be the only reason you were singled out for this unfair treatment, but it must be a large part of the reason you were harassed.

What ISN'T Workplace Sexual Harassment?

Many things are considered when a court or government agency decides what is and isn't workplace sexual harassment. Workplace sexual harassment may be hard to prove in court or to the EEOC if what happened was:

- Casual jokes or individual and isolated incidents (unless they are very serious, threatening or very offensive).
- Unreported harassment by a co-worker. A "co-worker" is someone who is not an owner, manager or supervisor at your workplace. This is why reporting the harassment as soon as possible is important. It will then be your employer's responsibility to deal with the harassment and make it stop. *If your employer does not make the harassment stop, then it is workplace sexual harassment.* (Other laws may protect you against a co-worker – assault or stalking laws, for example. See the Legal Voice memo *Are You Being Stalked?* listed in Resources at the end of this memo.)

I Am Being Sexually Harassed at Work. What Should I Do?

1. Tell your harasser to stop. If you do not feel safe or comfortable doing this, do your best to make it clear to the harasser that the offensive behavior is unwelcome.
2. Report the harassment to management and ask that something be done to stop it. Report the harassment to a person with decision-making authority. If your employer has workplace sexual harassment complaint procedures, follow them. Try to make your complaint in writing. If possible, have a trusted witness present when you make your complaint. Try to get some proof that the employer actually received your complaint and the date and time the complaint was made (for example, ask your employer to confirm in writing that they received your complaint). Keep a copy of

your complaint. In most cases, before an employer can be liable under discrimination laws, the employer must be given notice of the harassment and must have a chance to deal with the problem.

3. Cooperate in the employer's investigation of your complaint. Take advantage of any preventive or corrective opportunities provided by the employer.

You may also report the discrimination to the Washington State Human Rights Commission and/or the EEOC (U.S. Equal Employment Opportunity Commission). If you plan to later sue under federal civil rights law, you must first report the discrimination to the EEOC. (See "What Are the Laws Against Workplace Sexual Harassment?" later in this memo.)

What Must My Employer Do?

1. Your employer must train all employees, managers and agents on what workplace sexual harassment is and how the employer will deal with reports of sexual harassment.
2. Your employer must have policies and procedures to prevent workplace sexual harassment and monitor and enforce those rules. It is not enough to just have policies and procedures. They must be shared with employees and enforced by the employer.
3. Your employer must have clear reporting procedures so that you can easily report workplace sexual harassment.
4. Your employer must thoroughly and promptly investigate reports of workplace sexual harassment. Your employer must do something to stop workplace sexual harassment quickly and effectively, and make sure it doesn't happen again. *Firing or changing the job of the victim in a negative way are not acceptable ways to deal with workplace sexual harassment.* For example, your employer may want to separate you from your harasser by changing your schedule or assigning you to a different location. If these changes are bad for your career or your paycheck, they are not acceptable solutions. These are called "adverse employment actions." (See the description of retaliation under "What Other Legal Claims Might Apply to Workplace Sexual Harassment?" later in this memo to learn more about adverse employment actions.)

Who May Be Liable for Workplace Sexual Harassment?

("Liable" means "Legally Responsible.")

- An employer who directly participated in the harassment may be liable if he or she is an owner, manager, partner or corporate officer or supervisor (who has authority over you).

- An employer may be liable if he or she knew or should have known about the harassment and did not take prompt and effective action to stop the problem.
- Under state law, individual supervisors or managers may be liable if their own actions are directly discriminatory (like promoting only men, even though there are qualified women).
- Under some circumstances, a union or its representatives may be liable.
- An employment agency may be liable.
- Religious organizations may be liable even though they have some protections from liability based on religious freedom.

Washington state employment discrimination law applies to an employer with 8 or more employees. However, any employer can be sued for workplace sexual harassment if you were fired from your job at least in part because the employer sexually harassed you, or violated public policy in other ways by firing you.

Under federal employment discrimination law, an employer must have at least 15 employees. But this limit does not apply if you have other claims based on race or national origin discrimination that qualify you for special protection under federal civil rights law (42 U.S.C. § 1981). Talk to a lawyer about whether your workplace can be sued for sexual harassment.

What Are the Laws Against Workplace Sexual Harassment?

Workplace sexual harassment is illegal under federal and state laws against employment discrimination. It is also illegal under some city ordinances (for example, in Seattle, Spokane, and Tacoma). Here is a short summary of the federal and state laws against discrimination.

Federal Law

Title VII (seven) of the Civil Rights Act of 1964 outlaws discrimination in employment on the basis of sex, race and other grounds. Sexual harassment is considered sex discrimination. Title VII is enforced by the EEOC (U.S. Equal Employment Opportunity Commission). The law applies to employers with 15 or more employees, employment agencies, and most unions.

State Law

The Washington State Law against Discrimination (RCW 49.60) also outlaws sex discrimination in employment. Sexual harassment is considered sex discrimination. The law applies to employers who have at least 8 employees. Under the state Law against Discrimination, workers may sue in state court or file a complaint with the Washington State Human Rights Commission.

How Much Time Do I Have to File a Complaint or Sue?

It depends on which law you decide to use – federal or state law.

Federal Law Time Limits

Under Federal Law, you must first file a complaint with the EEOC (U.S. Equal Employment Opportunity Commission). In Washington, a complaint must be filed within 300 days of the discrimination. (Normally, one has to file a claim within 180 days, but in Washington you have more time since sexual harassment is also illegal under state law.) The EEOC will investigate your case, and they may try to help everyone involved reach a voluntary settlement so you don't have to go to court. Although the EEOC may sue on your behalf, more often it will send you a "right-to-sue" notice. This notice lets you file a private lawsuit in court. Look at the EEOC website for information on how to file a claim with the EEOC: www.eeoc.gov/employees/howtofile.cfm

State Law Time Limits

To use state law, you must file a complaint with the Human Rights Commission within 180 days of the discriminatory event. If the harassment is ongoing, you have until 180 days after the most recent incident. However, it is usually best to file the complaint as soon as possible because it is not always clear if two discriminatory events are related. The Human Rights Commission will then investigate the case. If it finds the complaint valid, it can hold a hearing and take action against the employer.

In Washington, you may also sue in state court using Washington's Law against Discrimination **without** first filing a complaint with the Human Rights Commission. The suit must be filed within 3 years of the last discriminatory event. If you can show a pattern of discrimination, you may be able to get damages (money) for incidents older than 3 years.

If you think you have a workplace sexual harassment claim, you should talk to a lawyer soon. You should contact a lawyer well before the deadline because the lawyer will need time to evaluate your claim and prepare the paperwork. If you do not file your claim on time, you will lose the lawsuit. See the Legal Voice publication *How to Find a Lawyer and Other Legal Resources in Washington State* listed in Resources at the end of this memo.

I Want to File a Claim or Sue. What Should I Do?

1. Tell your harasser to stop. If you do not feel safe or comfortable doing this, do your best to make it clear to the harasser that the offensive behavior is unwelcome.
2. Report the harassment to management and ask that something be done to stop it. Report the harassment to a person with decision-making authority. If your employer has workplace sexual harassment complaint procedures, follow them. Try to make your complaint in writing. If possible, have a trusted witness present when you make your complaint. Try to get some proof that the employer actually received your complaint and the date and time the complaint was made (for example, ask your

- employer to confirm in writing that they received your complaint). Keep a copy of your complaint.
3. If you are represented by a union, report the discrimination to your union and ask that they investigate and take appropriate action on your behalf.
 4. Do your best to follow through and keep up with your responsibilities at work. It will be hard, if not impossible to prove you were fired or unfairly disciplined because of workplace sexual harassment if you have a pattern of not coming to work, being late to work repeatedly, doing sloppy work, using alcohol or drugs at work, or coming to work drunk or on drugs.
 5. Keep a written log of dates, times, witnesses, and events you believe are important for your claim. Make those notes during breaks or after work. Do not set yourself up for the charge that you were doing personal business on company time. Keep your written log and notes at home or a secure location outside of the workplace.
 6. Only make or keep copies of documents if you have your employer's permission to do so. Getting records and information when you do not have such permission can get you fired and can defeat or limit your claim.
 7. Here are suggestions for taking notes of what happened. Limit your notes to the facts (who, what, when, where). Be accurate. Do not guess about the facts. Do not exaggerate. Do not misrepresent what happened. Make notes about your physical and emotional responses to the harassment (for example, losing your appetite, not being able to sleep, losing or gaining weight, being depressed, being afraid), and how the harassment affected your job performance.
 8. If you discuss your situation with sympathetic co-workers, have those conversations off the work premises and not on company time. Confide only in people you know for certain you can trust.
 9. If you have a written job description, keep a copy of that document in your personal records.
 10. If you are given a written job evaluation, ask for a copy and keep it. Good job evaluations are helpful in arguing against an employer's claim that you were disciplined or fired because of the quality of your work or poor work habits.
 11. If your employer gives you a written disciplinary warning or notice, read it carefully. Make sure you understand it before you sign it. If you do not understand it, ask questions. Ask for permission to have a witness be at any disciplinary meeting. If you do not agree with the notice, write a statement with your view of the facts and ask that the statement be put in your employment file. Keep a copy of your statement. You have a right to look at your personnel file to make sure your statement is part of your file.

12. If you are fired, you are entitled to a written statement explaining why you were fired.
13. If you talk to a lawyer, make the best use of the time available by organizing your information neatly and in order by dates of the incidents. Prepare a brief, clear summary of the highlights of your claim.
14. Before you hire a lawyer, make sure you understand how the lawyer is going to be paid and how much the lawyer charges. You also need to understand what costs you will be charged in addition to the lawyer's fee. (See the Legal Voice memo *Working with a Lawyer* listed in Resources at the end of this memo.)
15. Be prepared for the fact that when you make a claim for emotional distress, which may be a big part of your claim, the harasser will be able to access what would otherwise be private and confidential information about you. Records and information about your health care, education, employment, family life and any possible criminal history will be open to inspection by your employer's lawyer.

What Can My Employer Do to Defend Themselves?

Your employer can try to prove:

1. They (or upper management) had adequate policies and procedures to prevent workplace sexual harassment;
2. They did not know about, or could not have known about the harassment;
3. They took reasonably prompt and adequate corrective steps to prevent further harassment; and/or
4. You unreasonably failed to take advantage of the preventive or corrective protection available through your employer.

However, if a supervisor or manager's harassment resulted in an adverse employment action against you, they will not be able to use any of those reasons to defend themselves. (For more information on "adverse employment actions," see the description of retaliation under "What Other Legal Claims Might I Be Able To Use?" later in this memo.)

Your employer can also try to prove that there is a legitimate business reason that explains any unequal treatment you experienced based on your gender (for example, a women-only spa may only want to hire women to provide spa services). They may also try to show that your evidence is not good enough to prove you were a victim of workplace sexual harassment.

What Can I Get If I Win?

If your case settles or you win at trial, you may be able to get out-of-pocket expenses, damages (money) for mental distress, medical expenses, lost wages (both past and future), job reinstatement, restoration of job benefits, promotion, litigation costs and

lawyer fees. In some situations, you might get punitive damages (this is where a court might award additional money if harassment was severe and the court believes the employer should be punished above and beyond what is normally awarded in workplace sexual harassment cases).

What Other Legal Claims Might I Be Able to Use?

Breach of written contract: In some circumstances, you may also bring a claim against your employer for breach of written contract. This could include a union bargaining agreement or, in rare circumstances, an employee handbook.

Retaliation: If your employer fires or disciplines you at work because you make a claim for workplace sexual harassment, you can also bring a claim for retaliation. To prove a retaliation claim, you will need to prove that your complaint of workplace sexual harassment was a major reason why your employer treated you unfairly at work. Called “adverse employment actions,” unfair treatment can include taking away job responsibilities or privileges; taking favorable work assignments or preferred customers away from you and giving them to another employee; excluding you from staff meetings; assignment to a less favorable office environment; reassignment that requires a longer commute; hostility by co-workers; preventing your access to necessary work information; downgrading job status or performance evaluations; denial of job promotion; denial of overtime hours or a full work week; assignment to an undesirable work schedule; frequent staff or shift changes; refusal to assign meaningful work; unwarranted and unsubstantiated letters of reprimand or discipline; reduction in pay; suspension; termination (being fired).

Discrimination: You may also be able to make claims for discrimination based on race, national origin, disability, religion, age or pregnancy status, or based on your participation in union activities. (See the Legal Voice memo *Employment Discrimination* listed in Resources at the end of this memo.)

Negligent or Intentional Infliction of Emotional Distress: In some situations, you may also bring claims for negligent or intentional infliction of emotional distress.

And finally, depending on the facts, you may also have claims under:

- Assault and battery laws
- Equal pay statutes
- Fair labor standards laws
- Family and medical leave laws
- Minimum wage laws
- Whistleblower protections

Talk to a lawyer about what other legal claims you might be able to use. (See the Legal Voice memo *How to Find a Lawyer and Other Legal Resources in Washington State and Working with a Lawyer* listed in Resources at the end of this memo.)

What If I Am an Undocumented Worker?

Most labor and employment laws apply to undocumented workers, including laws against workplace sexual harassment. Undocumented workers, however, sometimes cannot get back pay for claims of workplace sexual harassment.

If you work with a lawyer, your lawyer should keep your immigration status confidential. The “attorney-client privilege” means that your lawyer must not tell others anything about your case, including your immigration status, unless you give the lawyer permission. There are a few narrow exceptions to this rule. You should also talk to your lawyer about legal ways to keep others from finding out about your immigration status. A lawyer will probably be able to make sure people involved in your workplace sexual harassment case do not find out about your immigration status.

In a few situations, you might qualify for a “U visa” because of workplace sexual harassment. U visas are for victims of crime who help with law enforcement investigations. With a U visa, you would be able to stay in the U.S. legally.

The Northwest Immigrant Rights Project (NWIRP) answers questions about immigration. The website is www.nwirp.org. Click on “Get Help” for a list of phone numbers.

Resources:

- EEOC (U.S. Equal Employment Opportunity Commission): Government agency responsible for making sure that employers follow federal laws against discrimination. The EEOC has offices throughout the country, including a field office in Seattle. Website has information about filing a discrimination complaint.
Online: www.eeoc.gov
- Gay/Lesbian/Bisexual/Transgender Clinic, Seattle: 30-minute consultations free of charge by volunteer lawyers. Call to make an appointment. Clinic is held on the 3rd Thursday of every month from 7:00 p.m. to 9:00 p.m.
Online: [www.qlawfoundation.org/lgbtq-legal-clinic.html](http://www qlawfoundation.org/lgbtq-legal-clinic.html)
By phone: 206-235-7235
- Legal Voice: Related free publications available online.
Online: www.legalvoice.org/tools
 - Under “Gender-Based Violence”:
 - *Are You Being Stalked?*
 - Under “Lawyers & the Legal System”:
 - *Damages and Contingency Fees in Personal Injury and Discrimination Cases*

- *How to Find a Lawyer and Other Legal Resources in Washington State*
- *Working With a Lawyer*
- Under “Employment and Economic Security”:
 - *Employment Discrimination*
 - *Know Your Rights: Domestic Workers*
 - *Leave From Work for Survivors of Domestic Violence, Sexual Assault, or Stalking*
- The Northwest Immigrant Rights Project (NWIRP): Answers questions about immigration.
Online: www.nwirp.org; click on “Get Help” for a list of phone numbers.
- Washington State Human Rights Commission: Government agency that works to stop discrimination in Washington and make sure that employers follow the Washington State Law against Discrimination (RCW 49.60). Website has information about filing a discrimination complaint.
Online: www.hum.wa.gov
- Washington LawHelp: Related free publications available online.
Online: www.washingtonlawhelp.org/issues/employment-farm-worker-rights; click on “Employment rights, generally”:
 - *I Lost My Job. Do I Have Rights?*
 - *Your Rights and Responsibilities as an Employee in Washington State*
 - *Job Discrimination*
 - *Job Retaliation*
- Washington State Law Against Discrimination: Read the full text online.
Online: <http://apps.leg.wa.gov/rcw>; click on “Title 49” (Labor regulations), then click on “49.60” (Discrimination -- Human rights commission)
- Women’s Bureau of the U.S. Department of Labor: Federal government agency that promotes women’s interests in the workplace. The Women’s Bureau has a regional office in Seattle.
Online: www.dol.gov/wb/

This publication provides general information concerning your rights and responsibilities. It is not intended as a substitute for specific legal advice. This information is current as of February 2016.

Updated by Alesha Struthers and Chloë Phalan, 2/8/16.

Thank you to Jennifer Pasquini, Elizabeth Shannon, Katie Chamberlain, June Krumpotick, Inessa Baram-Blackwell and Elise Fandrich for their work on previous versions of this memo.

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