A Fine Line

How to Recognize and Deal with **Sexual Harassment** in the Workplace

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Introduction

The U.S. Supreme Court confirms that employees have the right to work in an environment free from discriminatory intimidation, ridicule, and insult....A federal survey reveals that forty-two percent of female federal workers experienced persistent unwelcome sexual attention over a two-year period

Sexual harassment—unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature—is not new to the American workplace. This form of sex discrimination existed long before Title VII of the 1964 Civil Rights Act prohibited discrimination in employment on the basis of race, color, sex, national origin, and religion. What is new is the increased attention that sexual harassment is receiving, as employers move to ensure that federal law and company policies are not violated.

Many employers have renewed their efforts to combat sexual harassment in direct response to reports that reveal how widespread the problem is—nationwide studies and surveys conducted during the past ten years indicate that more than 80 percent of all working women and at least 15 percent of all working men have experienced some form of unwelcome sexual conduct in the workplace. The financial aspects of sexual harassment have also encouraged em-

ployers to focus on the problem. Absenteeism, employee turnover, and low productivity that result from sexual harassment can be extremely costly. Furthermore, money paid by employers for unemployment compensation, lawsuits, and court awards can run into the millions.

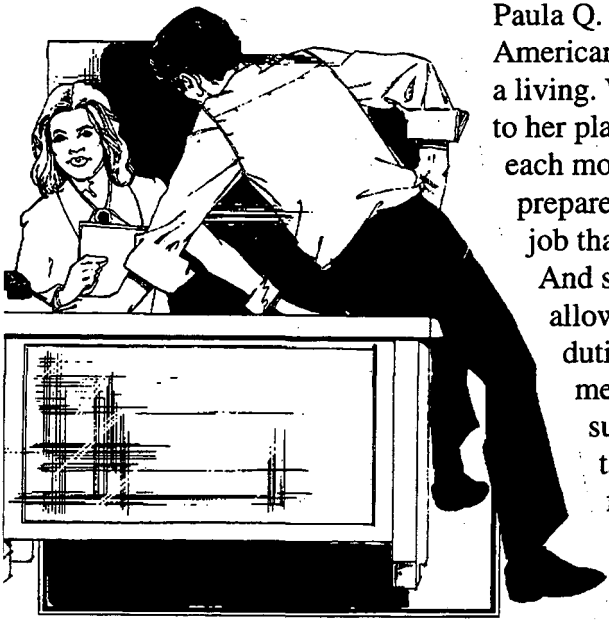
Sexual harassment usually occurs—and seems to thrive—because of a lack of awareness. Many individuals who sexually harass in the workplace are simply unaware that their behavior is improper and illegal. Likewise, many recipients of unwelcome sexual attention are not sure that subtle behavior qualifies as harassment. Even some of those who are sure don't think they can stop it. Add a lack of knowledge among supervisors and managers about how to recognize and deal with sexual harassment, and it becomes clear why the problem is so widespread.

At Lawrence Berkeley Laboratory, management is committed to creating and maintaining a work environment that is free from sexual harassment. That commitment includes increasing employee awareness by openly discussing the issue and by providing detailed information. This booklet, *A Fine Line: How to Recognize and Deal with Sexual Harassment in the Workplace*, is designed to serve as a resource for all Laboratory employees and to raise awareness of the Laboratory's policy on sexual

harassment. The major issues surrounding sexual harassment are examined in this booklet through the eyes of a fictitious character as she attempts to handle an unwelcome situation in her workplace. After the issues have been discussed, you can test your sexual harassment awareness by answering questions about scenarios that may or may not be sexual harassment (correct answers are provided). Included in this booklet are tips and guidelines about sexual harassment.

What's Going On Here?

Understanding the Problem
How Can I Be Sure?
Myth vs. Fact
Don't Ignore the Problem



Paula Q. is like millions of Americans—she works for a living. When Paula goes to her place of employment each morning, she is prepared to do the best job that she can that day. And she expects to be allowed to perform her duties without harassment. Her employer supports her expectation, and so does federal law. Unfortunately, reality doesn't always live up to expectations, as Paula has discovered recently. What happened? Let's join Paula at work and find out.

What's going on here?

(Paula is busy completing a progress report. Seth H., a coworker, makes his daily stop by Paula's office.)

"Paula," gushes Seth, as he plops down on the edge of her desk. "How's it going today?"

"Pretty good," says Paula, looking up from the papers on her desk.

(Their eyes meet, and the room fills with silence. Paula glances down at the papers.)

"Can I help you with something?" she mutters. "Wasn't that a great presentation yesterday?" asks Seth, as he edges over on the desk.

"Yes, it was," replies Paula, putting down her pencil, pushing back her chair, and smoothing her skirt down over her knees.

(Seth folds his arms and flashes Paula a big friendly smile.)

"Hanson is going to speak again tomorrow. This time he's talking about interpersonal relations and team work. If you're going, we can walk over together."

"I'd like to but I can't," blurts Paula. "I...I've got a report that's due tomorrow, and I'm only half finished."

"Well, I guess you'd better skip the talk."

(Seth slides along the edge of the desk until he is sitting directly in front of Paula.)

"Anyway," he says, lowering his voice. "I bet you know all you need to know about *relations*."

"*What*?"

"Relations," repeats Seth, as he leans over to rest his hands on Paula's chair. "You know, when two people..."

"I've got a lot of work to do," interrupts Paula, pushing back her chair farther and standing. "I'll talk to you later. OK?"

"Sure," grins Seth, getting up from the desk. "We can talk about relations anytime."

(Paula closes her office door after Seth leaves. She tries to continue working, but she can't. She is flustered, frustrated, and angry: flustered because being alone with Seth has begun to make her feel uneasy; frustrated because she wants him to stop dropping by for his friendly little chats, but she doesn't want to risk destroying their work relationship; and angry with herself because she can't decide if he is deliberately making sexual innuendoes or if she is being overly sensitive. Her concentration is gone, Paula struggles with her report for the rest of the morning. Shortly before lunch time, she telephones Gayle, a friend who works for another employer, and asks Gayle to meet her for lunch.)

"I'm glad you called me," says Gayle, as she sits down next to Paula. "We don't see nearly enough of each other anymore. How's that husband of yours?"

"Fine. He's at a conference in Chicago this week."

"And your mom?"

"Fine. They're all fine," says Paula too quickly. "Gayle, I realize that I haven't called you in a while, but I really need to talk to you today."

"What's wrong?"

"First, you've got to promise not to say anything to anyone," pleads Paula.

"OK."

"You've known me for a long time. Do you think I'm a prude?"

"A what?"

"A prude," echoes Paula. "Do you think I would over-react to comments? Friendly ones."

"I don't think so. What are you getting at?"

"Let me start at the beginning," says Paula. Slowly she recounts Seth's visits to her office over the last two months, noting how his behavior has gotten increasingly bold.

"What do you think?" she finally asks.

"I think you'd better stop by my office after lunch," answers Gayle. "I have some material I want you to take home and read."

Understanding the Problem

(That night, as she reads through one of Gayle's brochures on sexual harassment, Paula's eyes are drawn to the following passage:)

> **Sexual harassment, a form of employment discrimination, is prohibited by Title VII of the 1964 Civil Rights Act. Illegal sexual conduct in the workplace falls into two categories: *quid pro quo* and hostile work environment.**
>
> ***Quid pro quo* (conditional sexual harassment) exists when submission to unwelcome sexual conduct is made a condition of employment or employment decisions. This type of sexual harassment is clear-cut and easy to recognize because it usually involves some form of economic loss or gain. For example, recipients are often led to believe that if they respond to sexual requests, they will be rewarded with jobs, raises, promotions, or special privileges; if they reject the requests, they will be punished by not getting the job, getting demoted, not receiving a raise, or being fired.**
>
> **Hostile work environment sexual harassment occurs when unwelcome sexual behavior interferes unreasonably with an individual's performance on the job or when unwelcome sexual**

behavior creates an intimidating, hostile, or offensive work environment. Often more subtle than *quid pro quo,* this type of sexual harassment can be verbal (sexual statements, comments, jokes, questions, innuendoes), nonverbal (offensive posters on display, suggestive gestures, leering), or physical (brushing against someone's body, giving pats, squeezes, or hugs).

"A hostile work environment?" whispers Paula.

(She reads on.)

A hostile work environment was specifically addressed by the U.S. Supreme Court in 1986. In the landmark *Meritor Savings Bank vs Vinson* decision, the Supreme Court unanimously affirmed an individual's legal right to work in an environment that is free from the detrimental effects of sexual harassment.

The Court noted that a hostile work environment—created by unwelcome sexual advances, intimidation, ridicule, insult—amounts to illegal employment discrimination. And for the first item, the Court recognized that legal action can be taken against this type of sexual harassment under Title VII, even if the harassed employee does not suffer any economic loss in employment benefits.

How Can I Be Sure?

"I know I don't want Seth to act the way he does," exclaims Paula, "but is he really sexually harassing me?"

(Paula picks up another brochure and thumbs through it. Suddenly she stops and begins reading.)

> **Typically, behavior must be unwelcome and sufficiently severe or pervasive to alter the conditions of an individual's employment to be sexual harassment. That is, the behavior must be unwanted and unasked for and must exceed a proper limit or occur so often that it creates an abusive or hostile work environment. However, a first-time act—grabbing and kissing a coworker, bluntly making a sexual demand, displaying pornography—can be so outrageous that it immediately qualifies.**
>
> **Sexual conduct that does not fit the above description may not be harassment. Take, for example, the individual who politely asks a coworker for a date. Most reasonable people would agree that this behavior is not sexual harassment. However, repeatedly cornering an individual and asking for a date after that person has said no *is*. Behavior can, of course, fall between these two extremes, in which case individual judgment comes into play.**
>
> **A good rule of thumb for distinguishing between appropriate, inappropriate, and illegal behavior is to ask oneself the following questions:**

• Do I take part equally in the behavior?

• Do I encourage the behavior or return it—in other words, is it welcome?

• Would I approve if someone behaved like this with my child, parent, spouse, or special friend?

• Does the source of the behavior act the same way with members of his or her own sex?

• Would the individual want his or her conduct reported to family members or written about in the local newspaper?

If the answer to any of these questions is no, the behavior is inappropriate—probably illegal—and does not belong in the workplace.

"I haven't been overreacting!" blurts Paula. "Seth has been sexually harassing me."

(Her mind quickly begins replaying the incidents of the past two months.)

"What," she asks herself, "did I do to provoke his behavior?"

Myth versus Fact

Paula's question is not an uncommon one for sexual harassment recipients to ask. Many ideas about sexual harassment have been influenced by myths, and the most common of these is that the individual receiving the sexual attention wants or is somehow responsible for the attention. But as with most myths, this one has little to do with the facts.

Fact: Most people who are sexually harassed neither ask for, encourage, nor want sexual attention in the workplace.

Let's examine some of the other myths surrounding sexual harassment.

Myth: Harassers are nonmanagerial he-men who only bother attractive, helpless females.

Fact: Sexual harassers and the objects of their attention come in all shapes and sizes and from all walks of life; they are men and women at all levels in an organization. This myth does, however, contain some truth. That is, most recipients of unwelcome sexual attention are women, and many of them *feel* helpless.

Myth: Sexual harassment is the only kind of harassment prohibited in the workplace.

Fact: All forms of harassment and discrimination must be eliminated from the workplace if individuals are to be assured of equal employment opportunities. **Lawrence Berkeley Laboratory does not discriminate in its policies, procedures, or practices on the basis of race, color, national origin, religion, sex, sexual orientation, disability, age, or veteran status. In addition, the Laboratory prohibits discrimination on the**

basis of medical condition (as defined in the California Government Code), ancestry, marital status, or citizenship (within the limits imposed by law, the Department of Energy, or University of California regulations.)

Myth: Most people who sexually harass behave as they do because they are preoccupied with sex.

Fact: Contrary to popular belief, sexual harassment is seldom strictly about sex. The motivating force behind sexual harassment is often power—the harasser having or wanting control over an individual. In many cases, the harasser is not even conscious of this desire to control.

Myth: Employees who wear provocative or suggestive clothing to work are asking for sexual attention.

Fact: Regardless of what employees wear to work, other employees do not have the right to sexually harass them. Employees are responsible for dressing appropriately for work, and supervisors have the right to enforce this responsibility by counseling employees who dress provocatively or suggestively and by insisting on appropriate attire. In determining whether an employee is appropriately dressed for work, a reasonable-person standpoint is applied. That is, if the attire in question does not substantially affect a reasonable person's work

environment and ability to safely perform assigned duties, then the outfit is appropriate. Employees should remember that a pattern of provocative or suggestive dressing can hurt a victim's credibility when the unwelcomeness of sexual attention is an issue.

Myth: Many people use an allegation of sexual harassment to get revenge on someone they are angry with.

Fact: Nationwide studies indicate that the majority of sexual harassment allegations are valid. And most experts agree that few individuals are willing to subject themselves to the attention that follows by deliberately making a false charge. **At the Laboratory, thorough investigation of sexual harassment allegations ensures against false charges.**

Myth: If an individual had a relationship with an alleged harasser (a relationship in which both parties willingly took a part), he or she cannot claim sexual harassment.

Fact: A past relationship does not mean that one of the individuals has to put up with unwelcome sexual attention from the other. The same standard applies whether or not the recipient had or has a personal relationship with the offender. If the sexual conduct in the workplace is unwelcome or creates an intimidating, hostile, or offensive work environment, it is sexual harassment, and it is prohibited.

Myth: The first amendment guarantees freedom of speech anywhere in the United States, including the workplace.

Fact: First amendment rights in the workplace are not absolute and can be limited by the degree to which one's speech or actions affect the rights of others. An employee *cannot* always say whatever he or she wants to say to another employee.

Myth: The best way to avoid being accused of sexual harassment is to stay away from members of the opposite sex.

Fact: Avoiding or excluding individuals because of their sex is not the answer to the sexual harassment problem. Such behavior is inappropriate in the workplace and may be a form of sex discrimination.

Myth: Now that everyone is up in arms about sexual harassment, I have to change my entire behavior. I can't even joke with a coworker.

Fact: If an individual's behavior is inappropriate for the workplace, it has to change. However, behavior that is not unwelcome sexual conduct and that does not create an intimidating, offensive, or hostile work environment should not create a problem. Consequently, employees can still be friends, have lunch together, or behave in any manner that is appropriate for their work environment.

Don't Ignore the Problem

(Let's rejoin Paula, who has just finished reading all the sexual harassment material that Gayle gave her. She now understands that she is not responsible for Seth's behavior.)

"But how can I stop it?" she asks. "Should I talk to our boss or should I first say something to Seth?"

(Paula looks down at the material on her lap.)

"I remember seeing a passage that may help me decide."

(She picks up a booklet and quickly begins turning pages.)

"Yes, here it is."

(She reads.)

Don't ignore sexual harassment! It may only get worse. Immediately ask the harasser to stop the unwelcome behavior. If the harassing continues, report it.

Ideally, employees should seek resolution to sexually harassing incidents in the most direct way and at the lowest level possible. Some individuals who sexually harass are simply unaware that their behavior—wolf whistling, displaying pinups, repeatedly asking for dates, making innuendoes—is offensive. When asked to stop, they will. However, if a harasser is fully aware of what he or she is doing or if the situation is such that the direct approach does not or will not work, the employee needs to talk with the immediate supervisor or another appropriate manager. He or she should explain the situation and ask management to take corrective action that will stop the unwelcome behavior or address the hostile work environment concerns. If the problem is not resolved or if the employee feels more comfortable taking a sexual harassment concern or allegation to an office outside of the immediate work area, contact the Labor Relations/Employee Relations Office or the Office of Work Force Diversity.

(Ready to face the situation at work, Paula puts away the sexual harassment material for the night. the next morning, she arrives at the office early and immediately starts working on her report. The final draft is almost complete when...)

"Morning Paula," sings a familiar voice.

"Good morning," Seth."

"Just stopped by to see if you changed your mind about going to Hanson's talk. You know, the one on relations."

"No, I haven't changed my mind," replies Paul. "But come in."

(She points to a chair across from her desk.)

"Seth, please sit down in the chair. There's something I want to say to you..."

See pages 40–41 for tips on what to do if sexually harassed. **At the Laboratory, the Labor Relations/Employee Relations Office and the Office of Workforce Diversity are available to assist employees who have questions about specific sexual harassment situations.**

Test Your Awareness

Now that Paula has become familiar with sexual harassment and the issues surrounding it, she will take all the steps necessary to see that her problem is resolved. And if she is ever again confronted with harassing behavior, she will be able to immediately recognize it as such. But what about you? Has your awareness of sexual harassment in the workplace increased? To test yourself, read the following scenarios carefully and try to answer the accompanying questions. Check your responses against the answers, which immediately follow the questions. The answers include some of the guidelines, rules, and definitions that you were introduced to earlier in the booklet.

Scenarios

A. Elena, a secretary, is a very attractive woman. A few men in her work group are quite obvious about their attraction to her. They constantly stare at her, and more than once she has overheard them discussing her anatomy and making sexual remarks about her. Although the men have never said or done anything directly to her,

Elena is embarrassed and uncomfortable around them. Jack, the supervisor, knows a little about sexual harassment and watches out for it in his workplace. For some time, he has observed the men's behavior and Elena's discomfort. He has taken no action and believes the situation is not a problem because Elena never complains and the men never directly approach her.

Questions:

1. Is Elena being sexually harassed?

2. What should Elena do?

3. Is Jack acting responsibly? If not, what should he do?

Answers:

1. Yes, Elena is offended by the men's behavior, which is creating a hostile work environment. She is uncomfortable around them and is forced to work in an embarrassing situation. And if Elena feels that she must change her work routine in order to avoid the men, their behavior could also be affecting her ability to do her job.

2. Elena should tell the men that she has overheard their comments about her, that their behavior towards her is offensive, and that she wants it to stop. However, Elena's failure to confront the men does not mean that their behavior was welcome, nor does it rule out her filing a complaint of sexual harassment. Any actions by her that indicate unwelcomeness—disapproving looks, avoidance, obvious discomfort in the men's presence—should be enough for a reasonable person to understand that the

behavior is not wanted. If the conduct continues or if Elena feels uncomfortable confronting the men, she should discuss the problem with Jack or another appropriate manager and ask that the harassment be stopped.

3. No, Jack is not fulfilling his responsibilities as a supervisor. He is obligated to stop inappropriate behavior among his subordinates. After observing the men's conduct, Jack should have immediately talked to them and not waited for Elena to complain. He should have told them that their conduct was creating a hostile work environment and that their behavior must stop at once. By not handling the problem, Jack is leaving himself and his employer open to charges of sexual harassment—an employer has a legal obligation to ensure that its workplace is free of sexual harassment.

When an employer has delegated authority to a supervisor or a manager to act in a position of power over another employee, the employer is responsible for the acts of the supervisor when he or she is performing in that delegated capacity. For example, if a supervisor or manager knows of sexual harassment and does nothing to stop it, his or her employer is fully responsible—regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence.

B. Leo works for an investment firm. A highly valuable client is frequently making passes at him when she comes to his office. During their meetings, the client sits provocatively and frequently touches Leo's hand. And she always asks him to walk her to the elevator when their meetings are over—as they walk, she holds on to his arm. On one occasion, Leo's boss, Christy, is standing outside of Leo's office and observes the client's flirtatious behavior. She also notes the look of discomfort on Leo's face. However, she says nothing to the client. Later that day, Christy calls Leo into her office and apologizes for the client's behavior. She explains why she said nothing: she has no employment authority over the client, and she doesn't want to risk losing the client's business. Christy assures Leo that his dealings with the client will be over soon, and she asks him "to put up with it just a little longer."

Question:

If Leo lodges a sexual harassment complaint, will he have a valid claim against Christy or the company?

Answer:

An employer is responsible for the sexual harassment of an employee by a nonemployee—client, vendor, contractor—if the employer knew of or had reason to know of the behavior and failed to take immediate and appropriate corrective action. Because Christy, a manager, witnessed the sexual harassment and failed to take immediate corrective measures, Leo appears to have a valid claim if he lodges a sexual harassment complaint. Christy could have reduced her liability and that of her employer if she had confronted the client about the observed behavior and insisted that the client conduct herself properly when dealing with Leo or any other employee of the firm. She most certainly should not have asked Leo to put up with the client's improper behavior.

At the Laboratory, all individuals conducting business, such as vendors and contractors, are bound by the same standard of conduct as Laboratory employees. Harassment of employees by nonemployees is against Laboratory policy; incidents should be reported to an immediate supervisor, to Employee Relations/Labor Relations or to the Office of Workforce Diversity.

C. Four coworkers (male and female) often tease each other, make sexual comments, and tell sexual jokes among themselves. They sometimes leave suggestive notes and cartoons around the office.

Question:
Is this sexual harassment?

Answer:
The four coworkers are not being sexually harassed because there is equal initiation and participation, and the behavior is apparently welcome. Still, this behavior may create a hostile work environment for others in the work area who may be offended by the sexual jokes that they overhear or the cartoons and visuals that they see displayed. To avoid sexual harassment problems, the supervisor should tell the employees that their behavior is inappropriate and must be stopped.

On Laboratory premises, the display of sexually created visuals—calendars, cartoons, photos, or posters—is prohibited.

D. Jake works in an office with several men and women. Harry, Jake's supervisor, has a sexual preference for males, and during casual conversations, he has told this to Jake. Although Jake believes that Harry's private life is his own business, he is uncomfortable with some of Harry's behavior. For instance, Harry always touches Jake whenever he is at Jake's workstation explaining a procedure or having a discussion. He even began massaging Jake's shoulders as he stood over him one day, saying, "Relax Jake. You're tight as a drum. This report is not that difficult." Jake is especially bothered by the touching because he has noticed that Harry doesn't behave this way with other employees. However, Jake has not complained to Harry or to Harry's boss because Harry has never said anything improper to him. Jake has also said nothing because he doesn't want Harry to think that he is prejudiced against him because of his sexual preference.

Questions:

1. Is Jake being sexually harassed by Harry?

2. Can Jake complain without being accused of prejudice?

Answers:

1. If Harry's behavior makes Jake uncomfortable and creates a hostile work environment, it may be sexual harassment.

2. Jake has as much right to complain about Harry's touching him as he would have if he were a woman. Being

of the same sex is not a license to sexually harass another individual. And Jake should not worry about being accused of prejudice if he complains. His approval or disapproval of Harry's sexual preference is not the issue. Harry's conduct in the workplace is.

E. Sally's supervisor, Joe, has always treated her "like a lady." He often smiles at her or compliments her on her appearance. Sally, who never felt intimidated by Joe, used to enjoy this treatment. She was flattered and certain that he was just being friendly. That is, until a few weeks ago.

Around that time, Sally began thinking that Joe was acting overly attentive. She suspected that his interest in her was more than friendship, and her suspicion was confirmed when Joe asked her to have dinner with him. Sally was not interested in dating him, but before she could respond, Joe switched subjects and began talking about an important project that Sally had been hoping to work on. He casually mentioned that he was considering her for the project's team. Afraid that she wouldn't be selected for the team if she refused the date, Sally reluctantly agreed to have dinner with Joe.

Questions:

1. Did Joe sexually harass Sally?

2. What could Sally have done differently?

Answers:

1. This situation is tricky. By mentioning the date and the project at the same time, Joe seemed to imply that Sally would only be selected for the project team if she

dated him. Selection for a project team is an employment decision. Consequently, this situation could be implied *quid pro quo* sexual harassment because Sally thought that she had no other choice but to date Joe. On the other hand, Joe may not have connected his asking for a date and his talking about the team selection. He may have mentioned that he was considering Sally for the team simply to let her know how highly he thought of her. Whatever his true intention, Joe may be leaving himself open to charges of sexual harassment or conflict of interest by trying to date a subordinate. Even relationships between subordinates in which both parties are willing participants have potential sexual harassment and conflict of interest implications *(see the answer to scenario I for more information on favoritism)*

2. The most important thing that Sally could have done differently is not to feel obligated to date her boss. She should have politely told Joe that she does not want to date him and that she would like to keep their relationship on a professional level. If she is not selected for the project team, she should ask Joe what the selection criteria were and why she was not chosen. Joe should be able to tell her exactly why she did not make the final selection, since he said he was considering her. If Sally believes that her refusal to date him had anything to do with her not getting selected, she can follow her employer's procedures for addressing such problems. **If Sally worked at the Laboratory, she could contact an appropriate line manager in her division, Employee Relations/Labor Relations or the Office of Workforce Diversity.**

F. A work group consists of two females and four males. Although all the members have the same job title, the group's supervisor always makes the females take notes at the meetings, copy material, and distribute group information. In addition, the men often make derogatory comments about women, such as "In the natural order of things, a woman's place is in the home," and "Women are not equipped to work in scientific or managerial positions."

Questions:

1. Is the supervisor's behavior improper or illegal?

2. Are the men's comments about women sexual harassment?

Answers:

1. The supervisor's behavior is improper and possibly illegal because he is treating the women differently than he treats the men. Title VII of the 1964 Civil Rights Act prohibits sex discrimination in the workplace.

2. The men's derogatory comments about women fall into the category of sex-based harassment (behavior that ridicules a person because of his or her sex). Sex-based harassment is a form of illegal sex discrimination.

Although the men are not making unwelcome sexual advances to the women, their comments may create a work environment that is hostile, intimidating, and offensive. In which case, the women may be experiencing sexual harassment. A hostile work environment might also exist if the men were ridiculing or making derogatory comments about a coworker because of the coworker's sexual preference.

G. Amy complained to her supervisor, Wilbur, about Tom, a coworker. She said that Tom had made sexual comments to her, constantly touched or brushed against her, and repeatedly asked her for dates. Wilbur listened sympathetically and assured Amy that he would look into the problem. But before he ended their conversation, Wilbur asked Amy to try not to be so sensitive. He explained that "Tom means no harm. That's just the way he is, and he does it to all the girls." As promised, Wilbur talked to Tom. During their brief discussion, Tom acknowledged his behavior but used Amy's dressing habits as an excuse. He said that Amy seemed to "ask for it" by wearing form-fitting sweaters and short skirts. Wilbur agreed with him. Wilbur also nodded knowingly when Tom pointed out how Amy openly flirts with Michael, one of the other men in the group.

Questions:

1. Is Wilbur handling the situation appropriately?

2. Given her attire and flirtatious ways, does Amy have the right to complain?

Answers:

1. Wilbur is not handling the situation appropriately. To begin with, he is not dealing with the real issue—Tom's behavior. Instead, he is making excuses for Tom's actions based on personality judgments and an observation ("Tom means no harm. That's just the way he is, and he does it to all the girls"). What Wilbur is failing to see is that Tom's personality is irrelevant. What is relevant is

that Tom's behavior is inappropriate for the workplace and unwelcomed by Amy. Even if Tom means no harm, his actions are having a negative effect on Amy (it is not the intent behind behavior, but rather the impact on the recipient that is important). Wilbur was also acting inappropriately when he agreed with Tom's excuses, which were that Amy seemed to "ask for it" because of the way she dresses and that Amy flirts with another coworker. Regardless of what Amy wears, she has the right not to be sexually harassed on the job, and Wilbur has the responsibility to see that this right is not violated. Furthermore, Amy's having a relationship with another coworker does not mean that she has to put up with Tom's behavior.

As a supervisor, Wilbur should have said nothing to Amy that would make her feel responsible for the unwelcome behavior (such as his comment about her being too sensitive), nor should he have made excuses for Tom. Instead, Wilbur should have objectively received the complaint and should not have talked to Tom, Wilbur should have consulted the next level of management and the Human Resources or Employee Relations office. Trained investigators should have interviewed Tom and, if necessary, others to determine the facts including whether this was an isolated incident. Wilbur and higher management should have then considered the investigative findings and taken appropriate action. Finally, Wilbur could have arranged to provide his work group with training about sexual harassment, especially since he admitted he had noticed inappropriate sexual conduct among his subordinates (Tom's behavior with "all the girls").

2. If management agreed with Tom that Amy's attire was seductive and that her behavior was sending mixed signals, these issues should be discussed with Amy, not Tom. In any event, Amy's attire and her behavior with another coworker do not prohibit her from complaining about Tom's sexual harassment. However, these factors may be taken into consideration when evaluating the unwelcomeness of Tom's attention.

H. Cheryl is a new member of a work group in which all the other members tell sexual jokes and tease each other. The joking and teasing seem harmless, but Cheryl never joins in—she feels uncomfortable. However, she listens, smiles a bit, and sometimes gives a nervous laugh because she doesn't want to appear unfriendly.

Question:
Is this situation sexual harassment?

Answer:
The behavior in this situation is inappropriate for the workplace and could escalate to sexual harassment. Although the sexual behavior is not directed at Cheryl, it is making her uncomfortable. Left unchecked, Cheryl's discomfort could affect her job performance. Her coworkers obviously do not realize that their conduct is offensive or unwelcome to Cheryl because she appears to take part by listening. Therefore, Cheryl should tell them that she is bothered by the behavior and ask them to stop. Directly approaching the offenders is often the easiest way to handle this type of problem. If Cheryl feels uncomfortable asking her coworkers to stop their behavior, she should talk to her supervisor about the situation.

I. Catherine and Luis, who have lived together for two years, work in the same department. Catherine was promoted to department head six months ago, and since that time, she has on occasion let her relationship with Luis influence her job decisions. For instance, Catherine recently had to choose one person from her department to make a presentation at a conference in Honolulu. Because she wanted Luis to have a trip to Hawaii, Catherine selected him to attend the conference.

Question:
Can the other members of Catherine's department file a sexual harassment complaint based on the premise that Catherine's personal relationship with Luis is causing her to show him favoritism and that this favoritism is creating a hostile work environment for them?

Answer:

Although favoritism hasn't been discussed in detail in this booklet, the information about a hostile work environment should have helped you form an opinion as to whether Catherine's other subordinates would have a legitimate complaint against her. Still, the following answer may surprise you.

Sexual favoritism in the workplace toward a spouse, friend, or lover may be unfair, but according to the Equal Employment Opportunity Commission (EEOC), it is not necessarily illegal. In a policy-guidance document issued to field office personnel in January 1990, the EEOC stated that Title VII of the 1964 Civil Rights Act does not prohibit isolated instances of preferential treatment based on consensual romantic relationships (that is, relationships in which both individuals willingly take part). The EEOC went on to explain that these instances of preferential treatment do not constitute sex discrimination because both male and female workers are disadvantaged by the favoritism for reasons other than gender.

How does this apply to our scenario? Catherine was not discriminating against the other employees on the basis of sex. Her decision to send Luis to the conference in Hawaii was based primarily on her romantic involvement with him. Therefore, the women in Catherine's department

had no more chance of being selected to go to the conference than the other men in the department had. On the other hand, if Catherine shows flagrant favoritism to Luis or to any other subordinate based on the granting of sexual favors, the employees who are not receiving preferential treatment may have grounds for filing a hostile work environment complaint if the situation is sufficiently severe or pervasive to alter the conditions of their employment and to create an abusive environment. In addition, supervisors or managers who practice widespread favoritism may be sending a message to employees that says subordinates must engage in sexual conduct to get fair treatment. Such a message, notes the EEOC, could form the basis of a *quid pro quo* harassment claim.

J. Cindy and Frank have worked together for several months and have a good working relationship. Frank has always been attracted to Cindy and occasionally complimented her on her exotic jewelry. Last week he finally approached her. He walked up to her desk and said, "Hi Cutie! How about a date this weekend?" Although Cindy likes Frank as a person, she is not interested in him romantically. She declined the date and quickly returned to her work—his advance made her feel uncomfortable. Slightly embarrassed, Frank mumbled, "Just thought I'd ask" and walked away.

Question:
Did Frank sexually harass Cindy?

Answer:
No, Frank did not sexually harass Cindy. Asking a coworker for a date is not illegal. Although Frank's request for a date made Cindy uncomfortable, a behavior such as this does not by itself constitute sexual harassment. Even combining the date request with Frank's past compliments on Cindy's jewelry does not equal sexual harassment—unless, or course, the compliments were sexually suggestive and occurred repeatedly. But if Frank were to continue his advances or if he were to grab Cindy's jewelry while complimenting her on it, he may be guilty of sexually harassing her.

What to Do if Sexually Harassed

Individuals who are sexually harassed in the workplace need to take immediate action to stop the offensive behavior. Here are some effective ways of handling the problem:

• Clearly inform the harasser that his of her behavior is unwelcome and that you want it to stop. Say exactly what it is that you want stopped, such as "I want you to stop rubbing my arm when you talk to me" or "I want you to stop telling me sexual jokes." If necessary, keep repeating what it is that you want stopped (this is known as the broken record technique). You do not have to justify your reasons for not wanting the behavior.

• If talking to the harasser does not work or if you are uncomfortable about a face-to-face confrontation, write a letter to the individual asking that the offensive behavior stop. Be sure to include specifics (what, when, where) in the letter. Date and sign the letter, then give it to the harasser in the presence of a witness. Keep a copy for your records.

• If the direct approach (either in person or in a letter) doesn't resolve the problem or if you are uncomfortable handling things yourself, contact your supervisor. Again, be specific. If your supervisor is the harasser, contact another appropriate manager.

• Keep a log in which you record the incidents and any specifics.

• Make others who may have witnessed incidents aware of the situation.

• If you are uncomfortable talking to your supervisor or line management, or if after talking to the supervisor the behavior continues, contact one of your Laboratory resource offices.

• *Don't ignore sexual harassment and assume it will stop*. This type of behavior will not go away by itself.

• *Don't try to deal with sexual harassment by yourself.* Get help. The Laboratory, which recognizes the harmful effects of sexual harassment, encourages counseling for complainants and other employees involved in sexual harassment complaints.

Guidelines for Supervisors

Receiving a Complaint
Observing Offensive Behavior

Both supervisors and employees are responsible for the environment in which they work. But as a supervisor, you have a special responsibility in the area of sexual harassment. Legally, the Laboratory can be liable for the sexually harassing behavior of supervisory personnel, even if Laboratory management is unaware of that behavior. In addition, as a supervisor, you may be held liable for the sexual harassment of one of your employees by another. Therefore, not only must you handle sexual harassment problems as they arise, you must take active measures to prevent their occurrence. Your task will be considerably easier if you follow this advice:

• Be a role model. Do not engage in inappropriate or sexually harassing behavior.

• Increase your awareness of sexual harassment. Become familiar with the basic laws governing sexual harassment in the workplace and read the Laboratory's policy statement on sexual harassment.

• Increase awareness of sexual harassment among your subordinates. Provide them with information on sexual harassment if necessary. Make sure that they know sexual harassment violates Laboratory policy and that it will not be tolerated. State that you and Laboratory senior management take the issue seriously.

• Learn to recognize harassment when it occurs—don't wait for a complaint. If you are unsure about a particular situation, contact the Office of Workforce Diversity or the Employee Relations/Labor Relations Office.

• Respond to all allegations of sexual harassment quickly, fairly, and appropriately. *Do not wait until the next time*. The problem will not go away by itself, and it may get worse.

Take the following steps when confronted with alleged sexual harassment or when you observe inappropriate sexual conduct in the workplace.

Receiving a Complaint

1. Meet with the complainant privately.

2. Take the situation seriously.

3. Ask for the specific details (who, what, where, when, how, witnesses).

4. Find out if it is a repeat incident.

5. Assure the complainant that sexual harassment is not tolerated at the Laboratory.

6. Offer help and support and inform the complainant that counseling is available.

7. Encourage the employee to say "no" or "stop" to the alleged harasser if further offensive behavior occurs.

8. Consult with the next management level.

9. Consult with Employee Relations/Labor Relations or the Office of Work Force Diversity.

10. Take appropriate action based on management and human resources consultations.

11. Monitor the situation to ensure that the behavior has stopped and that there is no retaliation against the complainant.

12. Follow up with the complainant to ensure that unwelcome sexual behavior has ceased.

Do not make any assumptions, pass judgment, or lay blame.

Do not lead the complainant in any way when talking with him or her (for instance, do not ask multiple choice questions or fill in part of a sentence).

Do not phrase questions in such a way as to imply guilt. (What have you done to encourage this behavior?)

Do not automatically assume that an alleged harasser is guilty. Be fair and get the facts.

Observing Offensive Behavior

1. Do not wait for a complaint before taking action to correct inappropriate behavior.

2. Ask the recipient of the inappropriate behavior how he or she was affected by it and clarify whether the behavior was unwelcome. Do not lead the recipient by mentioning sexual harassment. (If the behavior was welcomed, the behavior is still inappropriate but may not constitute sexual harassment.)

3. Tell the recipient that individuals do not have to put up with unwelcome sexual behavior in the workplace and that you will be speaking with the offender, even if the recipient was not adversely affected by the behavior.

4. Talk with the offender. Let the individual know that the behavior you observed is inappropriate and must be stopped immediately; review the Laboratory's sexual harassment policy with the offender; and warn against reprisal. Advise the individual that you will be consulting with the next level of management and with Employee Relations/Labor Relations or with the Office of Work Force Diversity to determine if further action is appropriate. Document the meeting.

5. Monitor the situation to ensure that the unwelcome sexual behavior has stopped and that there is no retaliation against any of the involved individuals.

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